

SUPREME COURT OF NEVADA

Case No. 79668

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Elizabeth A. Brown
Clerk of Supreme Court

GREENMART OF NEVADA NLV LLC,; and
NEVADA ORGANIC REMEDIES, LLC

Appellants,

v.

SERENITY WELLNESS CENTER LLC; TGIG, LLC; NULEAF INCLINE
DISPENSARY, LLC,; NEVADA HOLISTIC MEDICINE, LLC; TRYKE
COMPANIES SO NV, LLC; TRYKE COMPANIES RENO, LLC; PARADISE
WELLENESS CENTER; GBS NEVADA PARTNERS, LLC; FIDELIS
HOLDINGS, LLC; GRAVITAS NEVADA, LLC; NEVADA PURE, LLC;
MEDIFARM, LLC; MEDIFARM IV LLC;
and STATE OF NEVADA, DEPARTMENT OF TAXATION,

Respondents,

Appeal from the Eighth Judicial District Court,
Clark County, Nevada
District Court Case # A-19-786962-B
The Honorable Elizabeth Gonzalez

APPELLANT'S APPENDIX – VOLUME 2

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29	Notice of Entry of Order and Order Regarding Nevada Wellness Center, LLC's Motion to Alter or Amend Findings of Fact and Conclusions of Law Granting Preliminary Injunction	11/6/19	AA 007058 - AA 007067
20	Order Granting in Part Motion to Coordinate Cases for Preliminary Injunction Hearing	7/11/19	AA 004938 - AA 004940
22	Order Granting Preliminary Injunction (Findings of Fact and Conclusions of Law)	8/23/19	AA 005277 - AA 005300
46, 47	Preliminary Injunction Hearing, Defendant's Exhibit 2009 Governor's Task Force Report	n/a	AA 011408 - AA 011568
47	Preliminary Injunction Hearing, Defendant's Exhibit 2018 List of Applicants for Marijuana Establishment Licenses 2018	n/a	AA 011569 - AA 011575

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47	Preliminary Injunction Hearing, Defendant's Exhibit 5026 Nevada Organic Remedies, LLC's Ownership Approval Letter	n/a	AA 011591, AA 011592
47	Preliminary Injunction Hearing, Defendant's Exhibit 5026 Nevada Organic Remedies, LLC's Ownership Approval Letter as Contained in the Application	n/a	AA 011593 - AA 011600
47	Preliminary Injunction Hearing, Defendant's Exhibit 5038 Evaluator Notes on Nevada Organic Remedies, LLC's Application	n/a	AA 011601 - AA 011603
47	Preliminary Injunction Hearing, Defendant's Exhibit 5045 Minutes of ther Legislative Commission, Nevada Legislative Counsel Bureau	n/a	AA 011604 - AA 011633
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27	Serenity Wellness Center, LLC et al.'s Joinder to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction	9/30/19	AA 006506 - AA 006508
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing APPELLANT APPENDIX was filed electronically with the Nevada Supreme Court on the 13th day of January, 2020. Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

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/s/ David R. Koch
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(VI) A system for maintaining any equipment used to control sanitary conditions.

Sec. 184. 1. *Each marijuana establishment shall ensure that adequate lighting is provided in all areas of the marijuana establishment.*

2. If it is necessary for a marijuana establishment to have dim or no lighting in a certain area of the marijuana establishment for a specific reason, the marijuana establishment must have a written policy which specifies:

(a) The area needing dim or no lighting; and

(b) The reason the area needs dim or no lighting.

Sec. 185. 1. *Each marijuana cultivation facility, marijuana product manufacturing facility and retail marijuana store shall ensure that any building used to manufacture, process, package or hold marijuana or marijuana products:*

(a) Has adequate ventilation; and

(b) Contains equipment for adequate control over air pressure, microorganisms, dust, humidity and temperature when appropriate for the manufacture, processing, packaging or holding of marijuana or marijuana products.

2. Each marijuana cultivation facility, marijuana product manufacturing facility and retail marijuana store must use filtration systems, including, without limitation, prefilters and particulate matter air filters, when appropriate on air supplies to production areas. If air is recirculated to production areas, the marijuana establishment must take measures to control recirculation of dust from production. In areas where air contamination occurs during production, the marijuana establishment must ensure that there are adequate exhaust systems or other systems adequate to control contaminants.

Sec. 186. *Each marijuana establishment shall ensure that:*

- 1. Any building used to manufacture, process, package or hold marijuana or marijuana products supplies potable water under continuous positive pressure in a plumbing system free of defects that could contribute to the contamination of any marijuana or marijuana products. Potable water must meet the standards prescribed in the Primary Drinking Water Regulations, 40 C.F.R. Part 141. Water not meeting such standards is not permitted in the potable water system.*
- 2. Drains are of adequate size and, where connected directly to a sewer, are provided with an air break or other mechanical device to prevent back-siphonage.*

Sec. 187. *1. Each marijuana establishment shall ensure that it has written procedures:*

- (a) Assigning responsibility for sanitation and describing in sufficient detail the cleaning schedules, methods, equipment and materials to be used in cleaning the buildings and facilities of the marijuana establishment; and*
 - (b) For the use of appropriate rodenticides, insecticides, fungicides, fumigating agents and cleaning and sanitizing agents by the marijuana establishment.*
- 2. Each marijuana establishment shall ensure that the written procedures described in subsection 1 are followed.*
 - 3. All sanitation procedures of a marijuana establishment apply to work performed by contractors or temporary marijuana establishment agents for the marijuana establishment as well as work performed by full-time marijuana establishment agents during the ordinary course of operations.*

4. Each marijuana cultivation facility shall retain at least one person who is a certified applicator, as defined in NRS 555.2618, who is authorized to use pesticides for:

(a) If the marijuana cultivation facility engages in the cultivation of marijuana indoors, greenhouse and nursery pest control pursuant to subparagraph (2) of paragraph (c) of subsection 1 of NAC 555.640; and

(b) If the marijuana cultivation facility engages in the cultivation of marijuana outdoors, agricultural pest control of animals or plants pursuant to paragraph (a) or (b) of subsection 1 of NAC 555.640.

Sec. 188. *Each marijuana establishment shall ensure that any building used to manufacture, process, package or hold marijuana or marijuana products is maintained in a good state of repair.*

Sec. 189. 1. *Each marijuana cultivation facility, marijuana product manufacturing facility and retail marijuana store shall ensure that any equipment used to manufacture, process, package or hold marijuana or marijuana products:*

(a) Is of appropriate design and adequate size and is suitably located to facilitate operations for its intended use and for its cleaning and maintenance; and

(b) Is constructed so that surfaces which have direct contact with components, in-process materials, marijuana or marijuana products are not reactive, additive or absorptive so as to alter the safety, identity, strength, quality or purity of the marijuana or marijuana products beyond the official or other established requirements.

2. *Each marijuana cultivation facility, marijuana product manufacturing facility and retail marijuana store shall ensure that:*

(a) Any substances required for its operation, such as lubricants or coolants, do not come into contact with components, product containers, in-process materials, marijuana or marijuana products so as to alter the safety, identity, strength, quality or purity of the marijuana or marijuana products beyond the official or other established requirements;

(b) Equipment and utensils are cleaned, maintained and, as appropriate for the nature of the marijuana or marijuana products, sanitized and sterilized at appropriate intervals to prevent malfunctions or contamination that would alter the safety, identity, strength, quality or purity of the marijuana or marijuana products beyond the official or other established requirements; and

(c) Written procedures are established and followed for the cleaning and maintenance of equipment and utensils used to manufacture, process, package or hold marijuana or marijuana products. These procedures must include, without limitation:

(1) Assignment of responsibility for cleaning and maintaining equipment;

(2) Maintenance and cleaning schedules, including, where appropriate, sanitizing schedules;

(3) A description in sufficient detail of the methods, equipment and materials used in cleaning and maintenance operations and the methods of disassembling and reassembling equipment as necessary to assure proper cleaning and maintenance;

(4) Protection of clean equipment from contamination before use; and

(5) Inspection of equipment for cleanliness immediately before use.

3. Each marijuana cultivation facility, marijuana product manufacturing facility and retail marijuana store must maintain records of any maintenance, cleaning, sanitizing and inspection carried out pursuant to this section.

Sec. 190. *Each marijuana cultivation facility, marijuana product manufacturing facility and retail marijuana store shall ensure that:*

1. It has written procedures describing in sufficient detail the receipt, identification, storage, handling, sampling, testing and approval or rejection of components, product containers and closures and that it follows those procedures;

2. Components, product containers and closures are at all times handled and stored in a manner so as to prevent contamination; and

3. Bagged or boxed components, product containers or closures are stored at least 6 inches off the floor and are suitably spaced to permit cleaning and inspection.

Sec. 191. *1. Each marijuana cultivation facility, marijuana product manufacturing facility and retail marijuana store shall have written procedures for production and process control that are designed to assure that the marijuana or marijuana products have the identity, strength, quality and purity they purport or are represented to possess.*

2. The written procedures required pursuant to subsection 1 and any changes to those procedures must be drafted, reviewed and approved by the appropriate organizational units of the marijuana establishment and reviewed and approved by the quality control unit of the marijuana establishment.

3. Each marijuana cultivation facility, marijuana product manufacturing facility and retail marijuana store shall follow written production and process control procedures in

executing various production and process control functions and shall document these procedures at the time of performance. Any deviation from the written procedures must be recorded and justified by the marijuana establishment.

Sec. 192. 1. *Each marijuana cultivation facility, marijuana product manufacturing facility and retail marijuana store shall establish and follow written procedures describing in sufficient detail the receipt, identification, storage, handling, sampling, examination and testing of labeling and packaging materials.*

2. Any labeling or packaging materials that meet the appropriate written specifications established pursuant to subsection 1 may be approved and released for use. Any labeling or packaging materials that do not meet the specifications established pursuant to subsection 1 must be rejected to prevent their use in operations for which they are unsuitable.

3. Each marijuana cultivation facility, marijuana product manufacturing facility and retail marijuana store shall:

(a) Store separately with suitable identification the labels and other labeling materials for each type of marijuana or marijuana product, and the different strength, dosage form or quantity of contents;

(b) Limit access to the storage area described in paragraph (a) to authorized personnel of the marijuana establishment; and

(c) Destroy obsolete and outdated labels, labeling and other packaging materials.

Sec. 193. 1. *Each marijuana cultivation facility, marijuana product manufacturing facility, marijuana distributor and retail marijuana store shall ensure that marijuana or marijuana products that have been subjected to improper storage conditions, including,*

without limitation, extremes in temperature, humidity, smoke, fumes, pressure, age or radiation due to natural disasters, fires, accidents or equipment failures, are not salvaged and returned to the marketplace.

2. Whenever it is unclear whether marijuana or marijuana products have been subjected to the conditions described in subsection 1, a marijuana cultivation facility, marijuana product manufacturing facility or retail marijuana store may conduct salvaging operations only if:

(a) The marijuana or marijuana products are salvaged for use only for the purpose of extraction;

(b) Evidence from tests and assays performed by a marijuana testing facility indicates that the marijuana or marijuana products meet all applicable standards of quality and purity; and

(c) Evidence from inspection of the premises indicates that the marijuana or marijuana products and their associated packaging were not subjected to improper storage conditions as a result of the disaster or accident, if any.

3. A marijuana cultivation facility, marijuana product manufacturing facility and retail marijuana store must maintain records, including, without limitation, the name, lot number, production run number and disposition for marijuana or marijuana products salvaged pursuant to subsection 2.

Sec. 194. *1. Except as otherwise provided in subsection 2, a marijuana establishment shall:*

(a) Store, manage and dispose of all solid and liquid waste and wastewater generated during the processing of marijuana or production of marijuana products in accordance with all applicable state and local laws and regulations; and

(b) Render waste containing marijuana unusable before the waste leaves the marijuana establishment. Such waste includes, without limitation:

(1) Waste from marijuana plants, including, without limitation, roots, stalks, leaves, stems, flower, trim or solid plant material and any plant material used to create an extract;

(2) Solvents used in the processing of marijuana or extraction of concentrated marijuana;

(3) Any plant material or solvents discarded as a result of quality assurance testing or any other testing performed by a marijuana testing facility; and

(4) Any other waste as determined by the Department.

2. A marijuana distributor or retail marijuana store may return a marijuana product to a marijuana cultivation facility or marijuana product manufacturing facility to be rendered unusable.

3. Unless another method approved by the Department is used, waste containing marijuana must be rendered unusable by grinding and incorporating the waste with:

(a) For disposal using an organic method other than composting, the following kinds of compostable mixed waste:

(1) Food waste;

(2) Yard waste;

(3) Soil; or

(4) Other waste as approved by the Department; or

(b) For disposal in a landfill or other method not described in paragraph (a), the following kinds of noncompostable mixed waste:

- (1) Paper waste;*
- (2) Cardboard waste;*
- (3) Plastic waste; or*
- (4) Other waste as approved by the Department.*

↪ The amount of waste containing marijuana in the resulting mixture must be less than 50 percent by volume. Such waste must not be disposed of by composting.

4. A marijuana establishment shall provide notice to the Department using the seed-to-sale tracking system before rendering unusable and disposing of marijuana or marijuana products.

Sec. 195. 1. *Each marijuana testing facility must employ a scientific director who must be responsible for:*

(a) Ensuring that the marijuana testing facility achieves and maintains quality standards of practice; and

(b) Supervising all staff of the marijuana testing facility.

2. *The scientific director of a marijuana testing facility must have earned:*

(a) A doctorate degree in science from an accredited college or university and have at least 2 years of post-degree laboratory experience;

(b) A master's degree in science from an accredited college or university and have at least 4 years of post-degree laboratory experience; or

(c) A bachelor's degree in science from an accredited college or university and have at least 6 years of post-degree laboratory experience.

3. *If a scientific director is no longer employed by a marijuana testing facility, the marijuana testing facility shall not be permitted to conduct any testing.*

4. *Upon the appointment of a new scientific director by a marijuana testing facility, the marijuana testing facility shall not resume any testing until the Department conducts an inspection of the marijuana testing facility.*

Sec. 196. 1. *Each marijuana testing facility must:*

(a) *Follow the most current version of the Cannabis Inflorescence: Standards of Identity, Analysis, and Quality Control monograph published by the American Herbal Pharmacopoeia.*

(b) *Follow the Recommendations for Regulators -- Cannabis Operations published by the American Herbal Products Association.*

(c) *Be accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization by an impartial organization that operates in conformance with standard ISO/IEC 17011 of the International Organization for Standardization and is a signatory to the Mutual Recognition Arrangement of the International Laboratory Accreditation Cooperation.*

(d) *Follow the Guidelines for Laboratories Performing Microbiological and Chemical Analyses of Food, Dietary Supplements, and Pharmaceuticals -- An Aid to the Interpretation of ISO/IEC 17025:2005 (2015) published by AOAC International.*

2. *Each marijuana testing facility shall become proficient in testing samples using the analytical methods approved by the Department within 6 months after the date upon which the marijuana testing facility is issued a license.*

3. *The Department may require a marijuana testing facility to have the basic proficiency of the marijuana testing facility to execute correctly the analytical testing methodologies used*

by the marijuana testing facility validated and monitored on an ongoing basis by an independent third party.

4. Each marijuana testing facility shall:

(a) Adopt and follow minimum good laboratory practices which must, at a minimum, satisfy the OECD Series on Principles of Good Laboratory Practice (GLP) and Compliance Monitoring published by the Organisation for Economic Co-operation and Development.

(b) Become certified by the International Organization for Standardization and agree to have the inspections and reports of the International Organization for Standardization made available to the Department.

(c) Maintain internal standard operating procedures.

(d) Maintain a quality control and quality assurance program.

5. The Department or an independent third party authorized by the Department may conduct an inspection of the practices, procedures and programs adopted, followed and maintained pursuant to subsection 4 and inspect all records of the marijuana testing facility that are related to the inspection.

6. A marijuana testing facility must use, when available, testing methods that have undergone validation by the Official Methods of Analysis of AOAC International, the Performance Tested Methods Program of the Research Institute of AOAC International, the Bacteriological Analytical Manual of the Food and Drug Administration, the International Organization for Standardization, the United States Pharmacopeia, the Microbiology Laboratory Guidebook of the Food Safety and Inspection Service of the United States Department of Agriculture or an equivalent third-party validation study approved by the

Department of Taxation. If no such testing method is available, a marijuana testing facility may use an alternative testing method or a testing method developed by the marijuana testing facility upon demonstrating the validity of the testing method to and receiving the approval of the Department.

7. The Department hereby adopts by reference:

(a) The Cannabis Inflorescence: Standards of Identity, Analysis, and Quality Control monograph published by the American Herbal Pharmacopoeia. A copy of that publication may be obtained from the American Herbal Pharmacopoeia, P.O. Box 66809, Scotts Valley, California 95067, or at the Internet address <http://www.herbal-ahp.org/>, for the price of \$44.95.

(b) The OECD Series on Principles of Good Laboratory Practice (GLP) and Compliance Monitoring published by the Organisation for Economic Co-operation and Development. A copy of that publication may be obtained free of charge from the Organisation for Economic Co-operation and Development at the Internet address <http://www.oecd.org/env/ehs/testing/oecdseriesonprinciplesofgoodlaboratorypracticeglpandcompliance/monitoring.htm>.

(c) Standard ISO/IEC 17025 published by the International Organization for Standardization. A copy of that publication may be obtained from the American National Standards Institute at the Internet address <https://webstore.ansi.org/RecordDetail.aspx?sku=ISO%2fIEC+17025%3a2005> for the price of \$162.

(d) The Guidelines for Laboratories Performing Microbiological and Chemical Analyses of Food, Dietary Supplements, and Pharmaceuticals -- An Aid to the Interpretation of ISO/IEC 17025:2005 (2015) published by AOAC International. A copy of that publication may be obtained from AOAC International at the Internet address http://www.aoac.org/aoac_prod_imis/AOAC/AOAC_Member/PUBSCF/ALACCCF/ALACC_M.aspx for the price of \$190.

Sec. 197. 1. Each marijuana testing facility must use the sampling protocols and the general body of required quality assurance tests for usable marijuana, as received, concentrated marijuana and marijuana products set forth in this section. Such tests may include moisture content, potency analysis, foreign matter inspection, microbial screening, pesticide and other chemical residue and metals screening and residual solvents levels. A marijuana testing facility may request additional sample material for the purposes of completing required quality assurance tests but may not use such material for the purposes of resampling or repeating quality assurance tests. A marijuana testing facility may retrieve samples from the premises of another marijuana establishment and transport the samples directly to the marijuana testing facility. A marijuana testing facility transporting samples may make multiple stops if:

(a) Each stop is for the sole purpose of retrieving a sample from a marijuana establishment; and

(b) All samples remain secured at all times.

2. The tests required pursuant to subsection 1 by a marijuana testing facility are as follows:

<i>Product</i>	<i>Tests Required</i>	<i>Tolerance Limit</i>
<i>Usable marijuana and crude collected resins, as received, excluding wet marijuana</i>	<ol style="list-style-type: none"> 1. <i>Moisture content</i> 2. <i>Potency analysis</i> 3. <i>Terpene analysis</i> 4. <i>Foreign matter inspection</i> 5. <i>Mycotoxin screening</i> 6. <i>Heavy metal screening</i> 7. <i>Pesticide residue analysis</i> 8. <i>Herbicide screening</i> 9. <i>Growth regulator screening</i> 10. <i>Total yeast and mold</i> 11. <i>Total Enterobacteriaceae</i> 12. <i>Salmonella</i> 13. <i>Pathogenic E. coli</i> 14. <i>Aspergillus fumigatus</i> 15. <i>Aspergillus flavus</i> 16. <i>Aspergillus terreus</i> 17. <i>Aspergillus niger</i> 18. <i>Total coliform</i> 	<ol style="list-style-type: none"> 1. <i>< 15%</i> 2. <i>N/A</i> 3. <i>N/A</i> 4. <i>None detected</i> 5. <i>< 20 µg/kg for the total of Aflatoxins B1, B2, G1 and G2 combined and < 20 µg/kg for Ochratoxin A</i> 6. <i>Arsenic: < 2 ppm</i> <i>Cadmium: < 0.82 ppm</i> <i>Lead: < 1.2 ppm</i> <i>Mercury: < 0.4 ppm</i> 7. <i>See section 200 of this regulation</i> 8. <i>See section 200 of this regulation</i> 9. <i>See section 200 of this regulation</i>

<i>Product</i>	<i>Tests Required</i>	<i>Tolerance Limit</i>
		10. < 10,000 colony forming units per gram 11. < 1,000 colony forming units per gram 12. None detected per gram 13. None detected per gram 14. None detected per gram 15. None detected per gram 16. None detected per gram 17. None detected per gram 18. < 1,000 colony forming units per gram
<i>Wet marijuana, as received,</i>	<i>1. Potency analysis</i>	<i>1. N/A</i>

<i>Product</i>	<i>Tests Required</i>	<i>Tolerance Limit</i>
<i>which is destined for extraction</i>	<p>2. <i>Terpene analysis</i></p> <p>3. <i>Foreign matter inspection</i></p> <p>4. <i>Mycotoxin screening</i></p> <p>5. <i>Heavy metal screening</i></p> <p>6. <i>Pesticide residue analysis</i></p> <p>7. <i>Herbicide screening</i></p> <p>8. <i>Growth regulator screening</i></p> <p>9. <i>Total yeast and mold</i></p> <p>10. <i>Total Enterobacteriaceae</i></p> <p>11. <i>Salmonella</i></p> <p>12. <i>Pathogenic E. coli</i></p> <p>13. <i>Aspergillus fumigatus</i></p> <p>14. <i>Aspergillus flavus</i></p> <p>15. <i>Aspergillus terreus</i></p> <p>16. <i>Aspergillus niger</i></p> <p>17. <i>Total coliform</i></p>	<p>2. <i>N/A</i></p> <p>3. <i>None detected</i></p> <p>4. <i>< 20 µg/kg for the total of Aflatoxins B1, B2, G1 and G2 combined and < 20 µg/kg for Ochratoxin A</i></p> <p>5. <i>Arsenic: < 2 ppm</i></p> <p><i>Cadmium: < 0.82 ppm</i></p> <p><i>Lead: < 1.2 ppm</i></p> <p><i>Mercury: < 0.4 ppm</i></p> <p>6. <i>See section 200 of this regulation</i></p> <p>7. <i>See section 200 of this regulation</i></p> <p>8. <i>See section 200 of this regulation</i></p> <p>9. <i>< 10,000 colony forming units per gram</i></p> <p>10. <i>< 1,000 colony</i></p>

<i>Product</i>	<i>Tests Required</i>	<i>Tolerance Limit</i>
		<i>forming units per gram</i> <i>11. None detected per gram</i> <i>12. None detected per gram</i> <i>13. None detected per gram</i> <i>14. None detected per gram</i> <i>15. None detected per gram</i> <i>16. None detected per gram</i> <i>17. < 1,000 colony forming units per gram</i>
<i>Extract of marijuana</i> <i>(nonsolvent) like hashish, bubble</i> <i>hash, infused dairy butter,</i> <i>mixtures of extracted products or</i>	<i>1. Potency analysis</i> <i>2. Foreign matter inspection</i> <i>3. Terpene analysis</i> <i>4. Mycotoxin screening</i>	<i>1. N/A</i> <i>2. None detected</i> <i>3. N/A</i> <i>4. < 20 µg/kg for the total</i>

<i>Product</i>	<i>Tests Required</i>	<i>Tolerance Limit</i>
<i>oils or fats derived from natural sources, including concentrated marijuana extracted with CO₂</i>	5. <i>Heavy metal screening</i> 6. <i>Pesticide residue analysis</i> 7. <i>Total yeast and mold</i> 8. <i>Total Enterobacteriaceae</i> 9. <i>Salmonella</i> 10. <i>Pathogenic E. coli</i> 11. <i>Aspergillus fumigatus</i> 12. <i>Aspergillus flavus</i> 13. <i>Aspergillus terreus</i> 14. <i>Aspergillus niger</i>	<i>of Aflatoxins B1, B2, G1 and G2 combined and < 20 µg/kg for Ochratoxin A</i> 5. <i>Arsenic: < 2 ppm</i> <i>Cadmium: < 0.82 ppm</i> <i>Lead: < 1.2 ppm</i> <i>Mercury: < 0.4 ppm</i> 6. <i>See section 200 of this regulation</i> 7. <i>< 1,000 colony forming units per gram</i> 8. <i>< 100 colony forming units per gram</i> 9. <i>None detected per gram</i> 10. <i>None detected per gram</i> 11. <i>None detected per gram</i> 12. <i>None detected per</i>

<i>Product</i>	<i>Tests Required</i>	<i>Tolerance Limit</i>
		<i>gram</i> <i>13. None detected per</i> <i>gram</i> <i>14. None detected per</i> <i>gram</i>
<i>Extract of marijuana (solvent-based) made with any approved solvent, including concentrated marijuana extracted by means other than with CO₂</i>	<i>1. Potency analysis</i> <i>2. Terpene analysis</i> <i>3. Foreign matter inspection</i> <i>4. Residual solvent test</i> <i>5. Mycotoxin screening</i> <i>6. Heavy metal screening</i> <i>7. Pesticide residue analysis</i> <i>8. Total yeast and mold</i> <i>9. Total Enterobacteriaceae</i> <i>10. Salmonella</i> <i>11. Pathogenic E. coli</i> <i>12. Aspergillus fumigatus</i> <i>13. Aspergillus flavus</i> <i>14. Aspergillus terreus</i>	<i>1. N/A</i> <i>2. N/A</i> <i>3. None detected</i> <i>4. < 500 ppm</i> <i>5. < 20 µg/kg for the total of Aflatoxins B1, B2, G1 and G2 combined and < 20 µg/kg for Ochratoxin A</i> <i>6. Arsenic: < 2 ppm</i> <i>Cadmium: < 0.82 ppm</i> <i>Lead: < 1.2 ppm</i> <i>Mercury: < 0.4 ppm</i> <i>7. See section 200 of this regulation</i>

<i>Product</i>	<i>Tests Required</i>	<i>Tolerance Limit</i>
	15. <i>Aspergillus niger</i>	8. < 1,000 colony forming units per gram 9. < 100 colony forming units per gram 10. None detected per gram 11. None detected per gram 12. None detected per gram 13. None detected per gram 14. None detected per gram 15. None detected per gram

<i>Product</i>	<i>Tests Required</i>	<i>Tolerance Limit</i>
<i>Edible marijuana product, including a product which contains concentrated marijuana</i>	1. <i>Potency analysis</i> 2. <i>Terpene analysis</i> 3. <i>Foreign matter inspection</i> 4. <i>Total Enterobacteriaceae</i> 5. <i>Salmonella</i> 6. <i>Pathogenic E. coli</i> 7. <i>Total aerobic count</i> 8. <i>Water activity or pH</i>	1. <i>N/A</i> 2. <i>N/A</i> 3. <i>None detected</i> 4. <i>< 1,000 colony forming units per gram</i> 5. <i>None detected per gram</i> 6. <i>None detected per gram</i> 7. <i>< 100,000 colony forming units per gram</i> 8. <i>Water activity < 0.86 or pH < 4.6</i>

<i>Product</i>	<i>Tests Required</i>	<i>Tolerance Limit</i>
<i>Liquid marijuana product, including, without limitation, soda or tonic, including a product which contains concentrated marijuana</i>	<i>1. Potency analysis</i> <i>2. Terpene analysis</i> <i>3. Foreign matter inspection</i> <i>4. Total Enterobacteriaceae</i> <i>5. Salmonella</i> <i>6. Pathogenic E. coli</i> <i>7. Total aerobic count</i> <i>8. Water activity or pH</i>	<i>1. N/A</i> <i>2. N/A</i> <i>3. None detected</i> <i>4. < 1,000 colony forming units per gram</i> <i>5. None detected per gram</i> <i>6. None detected per gram</i> <i>7. < 100,000 colony forming units per gram</i> <i>8. Water activity < 0.86 or pH < 4.6</i>
<i>Topical marijuana product, including a product which contains concentrated marijuana</i>	<i>1. Potency analysis</i> <i>2. Terpene analysis</i>	<i>1. N/A</i> <i>2. N/A</i>

3. A sample of usable marijuana must be at least 10 grams. A sample of a production run must be the lesser of 1 percent of the total product weight of the production run or 25 units of product. All samples must be homogenized before testing.

4. A marijuana establishment shall not submit wet marijuana to a marijuana testing facility for testing unless the wet marijuana is destined for extraction and weighed within 2 hours after harvest.

5. As used in this section, "as received" means the unaltered state in which a sample was collected, without any processing or conditioning, which accounts for all mass, including moisture content.

Sec. 198. 1. *When performing potency analysis or terpene analysis pursuant to section 197 of this regulation, a marijuana testing facility shall test for and quantify the presence of the following:*

(a) Cannabinoids:

- (1) THC;*
- (2) Tetrahydrocannabinolic acid;*
- (3) CBD;*
- (4) Cannabidiolic acid; and*
- (5) Cannabinol; and*

(b) Terpenoids:

- (1) Alpha-bisabolol;*
- (2) Alpha-humulene;*
- (3) Alpha-pinene;*
- (4) Alpha-terpinolene;*
- (5) Beta-caryophyllene;*
- (6) Beta-myrcene;*

(7) Beta-pinene;

(8) Caryophyllene oxide;

(9) Limonene; and

(10) Linalool.

2. A marijuana testing facility shall provide the final certificate of analysis containing the results of testing pursuant to this section to the marijuana establishment which provided the sample within 2 business days after obtaining the results.

Sec. 199. 1. *Except as otherwise provided in subsection 2, a marijuana testing facility shall perform testing to verify the homogeneity of the potency of an edible marijuana product by testing multiple samples from a single production run.*

2. A marijuana testing facility that tests an edible marijuana product which has previously had the homogeneity of the potency of the edible marijuana product verified by a marijuana testing facility and which has not undergone a change in recipe may verify the homogeneity of the edible marijuana product by testing one or more single units or servings from a production run of the edible marijuana product.

3. The marijuana testing facility will verify the homogeneity of the potency of the edible marijuana product only if:

(a) The concentration of THC and weight of each sample is within 15 percent above or below the intended concentration of THC and weight; and

(b) No combination of samples which comprise 10 percent or less of the marijuana product contain 20 percent or more of the total THC in the marijuana product.

Sec. 200. 1. *A marijuana establishment shall only use a pesticide in the cultivation or production of marijuana or marijuana products if the pesticide appears on the list of pesticides published by the State Department of Agriculture pursuant to NRS 586.550.*

2. When performing pesticide residue analysis pursuant to section 197 of this regulation, a marijuana testing facility shall analyze for the pesticides which occur on the list of pesticides published by the State Department of Agriculture pursuant to NRS 586.550 at the detection levels specified by the State Department of Agriculture and for any other substances required by the Department of Taxation. If:

(a) A pesticide which occurs on the list of pesticides published by the State Department of Agriculture pursuant to NRS 586.550 is detected at a level which exceeds the level specified by the State Department of Agriculture; or

(b) A pesticide which does not occur on the list of pesticides published by the State Department of Agriculture pursuant to NRS 586.550 is detected in any amount which is positively verified,

↪ the pesticide residue analysis is failed.

Sec. 201. 1. *A marijuana testing facility shall not handle, test or analyze marijuana unless:*

(a) The marijuana testing facility has been issued a license;

(b) The marijuana testing facility is independent from all other persons involved in the marijuana industry in Nevada; and

(c) No person with a direct or indirect interest in the marijuana testing facility has a direct or indirect financial interest in:

- (1) A retail marijuana store;*
- (2) A marijuana product manufacturing facility;*
- (3) A marijuana cultivation facility;*
- (4) A marijuana distributor;*
- (5) A provider of health care who provides or has provided written documentation for the issuance of registry identification cards or letters of approval; or*
- (6) Any other entity that may benefit from the cultivation, manufacture, dispensing, sale, purchase or use of marijuana or marijuana products.*

2. A marijuana testing facility is not required to use a marijuana distributor to collect or move samples for testing.

Sec. 202. 1. Immediately before packaging:

(a) Usable marijuana for sale to a retail marijuana store, marijuana product manufacturing facility or another marijuana cultivation facility, a marijuana cultivation facility shall segregate all harvested marijuana into homogenized lots of flower and trim, respectively, and allow a marijuana testing facility to select a representative sample for testing from each lot the marijuana cultivation facility has segregated. The marijuana testing facility which performs the test must collect the samples. If the marijuana cultivation facility has segregated the lot of harvested marijuana into packages or container sizes smaller than the entire lot, the marijuana testing facility must sample and test each package containing harvested marijuana from the lot.

(b) Concentrated marijuana or marijuana products, a marijuana product manufacturing facility shall allow a marijuana testing facility to select a random sample from each lot or

production run for testing by the marijuana testing facility. The marijuana testing facility performing the testing must collect the samples.

(c) The marijuana testing facility selecting a sample shall, using tamper-resistant products, record the batch, lot or production run number and the weight or quantity of the sample and seal the sample into a container.

2. A marijuana testing facility that receives a sample pursuant to this section shall test the sample as provided in section 197 of this regulation.

3. From the time that a lot or production run has been homogenized for sample testing and eventual packaging and sale to a retail marijuana store, marijuana product manufacturing facility or, if applicable, another marijuana cultivation facility until the marijuana testing facility provides the certificate of analysis from its tests and analysis, the marijuana establishment which provided the sample shall segregate and withhold from use the entire lot or production run, except the samples that have been removed by the marijuana testing facility for testing. During this period of segregation, the marijuana establishment which provided the sample shall maintain the lot or production run in a secure, cool and dry location so as to prevent the marijuana from becoming contaminated or losing its efficacy. Under no circumstances shall the marijuana establishment which provided the sample sell the marijuana or marijuana products, as applicable, to a retail marijuana store, marijuana product manufacturing facility or, if applicable, another marijuana cultivation facility before the time that the marijuana testing facility has completed its testing and analysis and provided the certificate of analysis to the marijuana establishment which provided the sample.

4. *Except as otherwise provided in subsection 5, a marijuana testing facility shall immediately return or dispose of any sample received pursuant to this section upon the completion of any testing, use or research. If a marijuana testing facility disposes of a sample received pursuant to this section, the marijuana testing facility shall document the disposal of the sample using its inventory control system pursuant to sections 108 and 109 of this regulation.*

5. *A marijuana testing facility shall keep any sample which fails testing or which is collected by the State Department of Agriculture for confirmation testing for 30 days after failure or collection. A sample which is kept pursuant to this subsection must be stored in a manner approved by the Department of Taxation. A marijuana testing facility shall dispose of a sample kept pursuant to this subsection after 30 days have elapsed after failure or collection.*

6. *Except as otherwise provided in section 210 of this regulation, if a sample provided to a marijuana testing facility pursuant to this section does not pass the testing required by section 197 of this regulation, the marijuana establishment which provided the sample shall dispose of the entire lot or production run from which the sample was taken and document the disposal of the sample using its inventory control system pursuant to sections 108 and 109 of this regulation.*

7. *If a sample provided to a marijuana testing facility pursuant to this section passes the testing required by section 197 of this regulation, the marijuana testing facility shall release the entire lot or production run for immediate manufacturing, packaging and labeling for sale to a retail marijuana store, a marijuana product manufacturing facility or, if applicable, another marijuana cultivation facility.*

8. *A marijuana establishment shall not use more than one marijuana testing facility to test the same lot or production run of marijuana without the approval of the Department.*

9. *A marijuana testing facility shall file with the Department, in a manner prescribed by the Department, an electronic copy of the certificate of analysis for all tests performed by the marijuana testing facility, regardless of the outcome of the test, including all testing required by sections 197 to 200, inclusive, of this regulation, at the same time that it transmits those results to the facility which provided the sample. The marijuana testing facility shall transmit an electronic copy of the certificate of analysis for each test to the Department by electronic mail at:*

(a) If the test was passed, mmelabpass@tax.state.nv.us; or

(b) If the test was failed, mmelabfail@tax.state.nv.us.

10. *An electronic mail message transmitted pursuant to subsection 9 must be formatted as follows:*

(a) The subject line of the electronic mail message must be the name of the marijuana establishment from which the sample was collected.

(b) The name of the electronic file containing the certificate of analysis must be:

(1) Except as otherwise provided in subparagraph (2) or (3), the four digit identifier assigned by the Department to the marijuana testing facility, followed by an underscore, followed by the four digit identifier assigned by the Department to the marijuana establishment from which the sample was collected, followed by an underscore, followed by:

(I) If the sample was from a production run, the production run number; or

(II) If the sample was not from a production run, the batch number, followed by an underscore, followed by the lot number.

(2) If the certificate of analysis is from a retesting of a previously failed sample, an underscore followed by the word "Retest" must be appended to the end of the name of the electronic file.

(3) If the certificate of analysis has been amended, an underscore followed by the word "Amended" must be appended to the end of the name of the electronic file.

(c) If the certificate of analysis has been amended, the electronic copy of the certificate of analysis must state "Amended" in bold red font at the center of the top of the first page of the report and must contain a statement of the reason for the amendment.

11. The Department will take immediate disciplinary action against any marijuana establishment which fails to comply with the provisions of this section or falsifies records related to this section, including, without limitation, revoking the license of the marijuana establishment.

12. A marijuana testing facility may subcontract its testing of marijuana or marijuana products only to another marijuana testing facility.

Sec. 203. 1. *At the request of the Department of Taxation, a marijuana testing facility may be audited or certified by the State Department of Agriculture.*

2. If the State Department of Agriculture audits or certifies marijuana testing facilities, the State Department of Agriculture will perform such technical inspections of the premises and operations of a marijuana testing facility as the State Department of Agriculture determines is appropriate.

3. If the State Department of Agriculture audits or certifies marijuana testing facilities, each marijuana testing facility shall comply with the requirements established by the State Department of Agriculture.

Sec. 204. *1. The Department will establish a proficiency testing program for marijuana testing facilities. A proficiency testing program must include, without limitation, providing rigorously controlled and standardized proficiency testing samples to marijuana testing facilities for analysis, reporting the results of such analysis and performing a statistical evaluation of the collective demographics and results of all marijuana testing facilities.*

2. Each marijuana testing facility must participate in the proficiency testing program established pursuant to this section.

3. If required by the Department as part of being issued or renewing a license, the marijuana testing facility must have successfully participated in the proficiency testing program within the preceding 12 months.

4. To maintain continued licensure as a marijuana testing facility, a marijuana testing facility must participate in the designated proficiency testing program with continued satisfactory performance as determined by the Department.

5. A marijuana testing facility must analyze proficiency testing samples using the same procedures with the same number of replicate analyses, standards, testing analysts and equipment as used for product testing.

6. The scientific director of the marijuana testing facility and all testing analysts that participated in proficiency testing must sign corresponding attestation statements.

7. The scientific director of the marijuana testing facility must review and evaluate all proficiency testing results.

8. Successful participation includes the positive identification of 80 percent of the target analytes that the marijuana testing facility reports to include quantitative results when applicable. Any false positive results reported will be considered an unsatisfactory score for the proficiency testing.

9. Unsuccessful participation in proficiency testing may result in limitation, suspension or revocation of the license of the marijuana testing facility.

10. The Department will select a proficiency testing provider to conduct the proficiency testing program and determine the schedule that the proficiency testing provider will follow when sending proficiency testing samples to marijuana testing facilities for analysis.

11. In addition to achieving the standard required pursuant to subsection 8, a marijuana testing facility successfully participates in the proficiency testing program only if the marijuana testing facility:

- (a) Obtains single-blind proficiency testing samples from the proficiency testing provider;*
- (b) Analyzes the proficiency testing sample for all analytes listed in sections 197 to 200, inclusive, of this regulation;*
- (c) Reports the results of its analysis to the proficiency testing provider;*
- (d) Analyzes a proficiency testing sample pursuant to the proficiency testing program not less frequently than once each 12 months;*
- (e) Pays the costs of subscribing to the proficiency testing program; and*

(f) Authorizes the proficiency testing provider to submit to the Department the results of any test performed pursuant to this section.

12. The performance of a marijuana testing facility is satisfactory pursuant to subsection 4 if the results of the testing performed pursuant to this section are within the limits of the acceptance range established by the proficiency testing provider. A marijuana testing facility that fails to meet this standard may request that the Department allow the marijuana testing facility to retest a proficiency testing sample once to establish satisfactory performance. If the Department denies the request or if the marijuana testing facility fails to meet the standard on retesting, the Department may limit, suspend or revoke the license of the marijuana testing facility.

Sec. 205. 1. At the request of the Department of Taxation, the State Department of Agriculture may collect and test random samples from marijuana establishments and compare the results of its testing to the results reported by marijuana testing facilities.

2. A marijuana establishment shall provide samples to the State Department of Agriculture upon request if the State Department of Agriculture conducts testing pursuant to subsection 1.

Sec. 206. Each marijuana testing facility must establish policies for an adequate chain of custody and requirements for samples of products provided to the marijuana testing facility for testing or research purposes, including, without limitation, policies and requirements for:

- 1. Issuing instructions for the minimum sample and storage requirements;*
- 2. Documenting the condition of the external package and integrity seals utilized to prevent contamination of, or tampering with, the sample;*

3. *Documenting the condition and amount of the sample provided at the time of receipt;*
4. *Documenting all persons handling the original samples, aliquots and extracts;*
5. *Documenting all transfers of samples, aliquots and extracts referred to another marijuana testing facility for additional testing or whenever requested by a client;*
6. *Maintaining a current list of authorized marijuana establishment agents and restricting entry to the laboratory to only those authorized;*
7. *Securing the marijuana testing facility during nonworking hours;*
8. *Securing short- and long-term storage areas when not in use;*
9. *Utilizing a secured area to log-in and aliquot samples;*
10. *Ensuring samples are stored appropriately; and*
11. *Documenting the disposal of samples, aliquots and extracts.*

Sec. 207. 1. *Each marijuana testing facility must agree to become accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization within 1 year after licensure.*

2. *Each marijuana testing facility that claims to be accredited must provide the Department with copies of each annual inspection report from the accrediting organization, including, without limitation, any deficiencies identified in and any corrections made in response to the report.*

3. *Inspection by an accrediting organization is not a substitute for inspection by the Department.*

Sec. 208. 1. *Upon the request of the Department, a marijuana cultivation facility and a marijuana product manufacturing facility must provide a marijuana testing facility designated*

by the Department with a sample of marijuana or a marijuana product in an amount determined by the marijuana testing facility to be sufficient for random quality assurance compliance checks in a secure manner such that the marijuana testing facility can confirm that it has received and is testing the correct sample.

2. The marijuana testing facility that receives a sample pursuant to subsection 1 shall, as directed by the Department:

(a) Screen the sample for pesticides, chemical residues, herbicides, growth regulators and unsafe levels of metals;

(b) Perform any other quality assurance test deemed necessary by the Department; and

(c) Report its results to the Department.

3. The marijuana cultivation facility or marijuana product manufacturing facility is responsible for all costs involved in screening or testing performed pursuant to this section.

Sec. 209. *A marijuana testing facility is not limited in the amount of usable marijuana and marijuana products it may have on the premises of the marijuana testing facility at any given time, but the marijuana testing facility must maintain records to prove that all usable marijuana and marijuana products on the premises are there for testing purposes only.*

Sec. 210. *1. Upon approval of the Department, a lot of marijuana that fails a microbial screening test may be used to make an extract. After processing, the extract must pass all required quality assurance tests.*

2. If a sample from a marijuana product manufacturing facility fails a quality assurance test, the entire production run from which the sample was taken automatically fails the quality assurance test.

3. At the request of a marijuana cultivation facility or a marijuana product manufacturing facility, the Department may, on a case-by-case basis, authorize a retest to validate the results of a failed test. The marijuana cultivation facility or marijuana product manufacturing facility is responsible for all costs involved in a retest performed pursuant to this section.

4. A marijuana cultivation facility or a marijuana product manufacturing facility may not request a retest pursuant to this section unless, at the time samples are initially taken for testing, two samples are collected at the same time by a marijuana testing facility using tamper-resistant bags. One of the samples must be taken by the marijuana testing facility for testing and the facility must place the other sample in a secure quarantine storage area at the facility for further retesting by a secondary marijuana testing facility or the State Department of Agriculture.

5. A marijuana cultivation facility or a marijuana product manufacturing facility shall submit a request for retesting to the Department in writing and on a form designated by the Department.

6. If the Department grants a request for retesting, the Department will select the marijuana testing facility that will perform the retest.

7. Except as otherwise provided in this subsection, a marijuana cultivation facility or a marijuana product manufacturing facility may submit a request for retesting of not more than 50 lots each calendar year. For any subsequent failure of a quality assurance test in a calendar year, the facility shall destroy the lot or the entire production run, as applicable. A lot

which only fails a quality assurance test for moisture content must not be counted for the purpose of this subsection.

8. A failed quality assurance test for pesticide residue must be retested by the State Department of Agriculture.

9. If a sample passes the same quality assurance test upon retesting, the marijuana cultivation facility or marijuana product manufacturing facility need not destroy the lot or production run and may sell the lot or production run to a marijuana cultivation facility, retail marijuana store or marijuana product manufacturing facility, as applicable.

10. If a sample fails the same quality assurance test upon retesting, the Department denies a request for retesting or a marijuana cultivation facility or a marijuana product manufacturing facility does not request retesting after a sample fails a quality assurance test, the facility shall destroy the entire lot or production run from which the sample was taken.

Sec. 211. *1. A marijuana distributor may transport marijuana and marijuana products between a marijuana establishment and another marijuana establishment or between the buildings of a marijuana establishment.*

2. A marijuana establishment shall not transport marijuana or marijuana products to a retail marijuana store unless the marijuana establishment holds a license for a marijuana distributor.

3. A marijuana distributor shall not purchase or sell marijuana or marijuana products unless the marijuana distributor holds a license for a type of marijuana establishment authorized by law to purchase or sell marijuana or marijuana products.

4. A marijuana distributor may enter into an agreement or contract with a marijuana establishment for the transport of marijuana or marijuana products. Such an agreement or contract may include, without limitation, provisions relating to insurance coverage, climate control and theft by a third party or an employee.

5. A marijuana distributor, and each marijuana establishment agent employed by the marijuana distributor who is involved in the transportation, is responsible for marijuana and marijuana products once the marijuana distributor takes control of the marijuana or marijuana products and leaves the premises of a marijuana establishment.

6. A marijuana distributor shall not allow a marijuana establishment agent to transport marijuana or marijuana products unless:

(a) The marijuana establishment agent carries a copy, for the duration of the transportation, of the transportation manifest generated using the seed-to-sale tracking system pursuant to section 212 of this regulation for the transportation;

(b) Each marijuana establishment agent involved in the transportation has, in his or her immediate possession, his or her marijuana establishment agent registration card or verification of temporary authorization;

(c) The marijuana or marijuana products are stored in a sanitary and secure manner in a lockbox or locked cargo area within the vehicle being used for delivery and not visible from outside the vehicle;

(d) The vehicle being used for delivery has no advertising, signage or other markings relating to marijuana; and

(e) The marijuana establishment agent transporting marijuana or marijuana products for the marijuana distributor on behalf of a marijuana establishment has a means of communicating with the marijuana establishment.

7. Each marijuana establishment agent transporting marijuana or marijuana products for a marijuana distributor must:

(a) Report to a person designated by the marijuana distributor to receive such reports any motor vehicle crash that occurs during the transportation within 2 hours after the crash occurs;

(b) Report to the Department any unauthorized stop that lasts longer than 2 hours; and

(c) Report to a person designated by the marijuana distributor to receive such reports any loss or theft of marijuana or marijuana products that occurs during the transportation immediately after the marijuana establishment agent becomes aware of the loss or theft. A marijuana distributor that receives a report of loss or theft pursuant to this paragraph must immediately report the loss or theft to the appropriate law enforcement agency and to the Department.

8. Each marijuana distributor shall maintain a log of all reports received pursuant to subsection 7 for review by the Department upon request.

9. Any marijuana or marijuana product which is damaged or refused by the receiving marijuana establishment must be transported back to the originating marijuana establishment.

Sec. 212. 1. *Before transporting marijuana or marijuana products pursuant to section 211 of this regulation, a marijuana distributor shall:*

(a) Ensure that all marijuana and marijuana products are secured at all times during delivery; and

(b) Maintain a physical or electronic copy of a transportation manifest generated using the seed-to-sale tracking system that contains all the information required by this section in a format approved by the Department.

2. A marijuana distributor may deliver marijuana or marijuana products to more than one marijuana establishment in a single trip if the transportation manifest correctly reflects the specific inventory destined for each specific marijuana establishment and location.

3. Before transferring marijuana or marijuana products to a marijuana distributor, the originating marijuana establishment shall enter the information required to indicate that the marijuana or marijuana products will be transported to the receiving marijuana establishment into the seed-to-sale tracking system. A marijuana establishment shall not list a marijuana distributor as the receiving marijuana establishment.

4. A marijuana distributor shall not alter the information which has been entered into the seed-to-sale tracking system pursuant to subsection 3.

5. If a marijuana distributor is not able to deliver marijuana or marijuana products directly to the receiving marijuana establishment due to normal business operations, the marijuana distributor shall notify the Department and the originating marijuana establishment of the premises where the marijuana or marijuana products will be stored and the anticipated date and time of delivery.

6. A marijuana distributor shall provide a copy of the transportation manifest generated using the seed-to-sale tracking system to the marijuana establishment receiving marijuana or

marijuana products. The copy of a transportation manifest provided to a marijuana establishment pursuant to this subsection must be generated separately for each marijuana establishment and must not contain the information of any other marijuana establishment.

7. The transportation manifest generated using the seed-to-sale tracking system must include, without limitation:

- (a) The date and approximate time of the departure;*
- (b) The name, location, address and license number of the originating marijuana establishment;*
- (c) The name, location, address and license number of the receiving marijuana establishment;*
- (d) The name, location, address and license number of the marijuana distributor;*
- (e) The name and quantity, by weight and unit, of each product to be delivered to each marijuana establishment;*
- (f) The estimated date and time of arrival;*
- (g) The make, model, license plate number and number of the identification card issued pursuant to section 216 of this regulation of the vehicle used for delivery; and*
- (h) The name, number of the marijuana establishment agent registration card and signature of each marijuana establishment agent performing or accompanying the transportation of the marijuana or marijuana products.*

8. In addition to the requirements of this section, the originating and the receiving marijuana establishment shall each ensure that each delivery satisfies the requirements of sections 108 and 109 of this regulation.

9. Before marijuana or marijuana products leave the originating marijuana establishment, the originating marijuana establishment shall adjust its records to reflect the removal of the marijuana or marijuana products in a manner that reflects the information included in the transportation manifest generated using the seed-to-sale tracking system and that can be easily reconciled, by the name and quantity of the marijuana or marijuana products, with the transportation manifest.

10. After receipt of marijuana or marijuana products, the receiving marijuana establishment shall:

(a) Confirm that the marijuana or marijuana products are as described in the transportation manifest;

(b) Adjust its records to reflect the receipt of the marijuana or marijuana products in a manner that reflects the information included in the transportation manifest generated using the seed-to-sale tracking system and that can be easily reconciled, by the name and quantity of the marijuana or marijuana products, with the transportation manifest; and

(c) Separately document, in the seed-to-sale tracking system and any other relevant business records, any differences between the quantity of marijuana or marijuana products specified in the transportation manifest and the quantities actually received.

11. After transferring marijuana or marijuana products to the receiving marijuana establishment, the marijuana distributor shall enter the end time of the trip in the trip plan and ensure that the trip plan, including any changes to the trip plan made pursuant to subsection 5, is accurate.

12. Each retail marijuana store and marijuana distributor shall maintain all documents required by this section and provide a copy of any such document to the Department for review upon request.

Sec. 213. *1. A marijuana cultivation facility or a marijuana product manufacturing facility may transport marijuana or marijuana products to or from a marijuana cultivation facility, a marijuana product manufacturing facility or a marijuana testing facility.*

2. A marijuana testing facility or a retail marijuana store may transport marijuana or marijuana products to or from a marijuana testing facility for testing.

3. The requirements of section 211 of this regulation for a marijuana distributor apply to a marijuana establishment that transports marijuana or marijuana products pursuant to this section without using a marijuana distributor.

Sec. 214. *A marijuana establishment shall not transport marijuana or marijuana products to a retail marijuana store unless the marijuana establishment:*

- 1. Holds a license for a marijuana distributor;*
- 2. Holds a medical marijuana establishment registration certificate and is only transporting marijuana or marijuana products for the medical use of marijuana;*
- 3. Is a marijuana testing facility transporting samples for testing; or*
- 4. Is a dual licensee and is only transporting marijuana or marijuana products for the medical use of marijuana to a medical marijuana dispensary or a dual licensee.*

Sec. 215. *1. A marijuana distributor may transport any amount of marijuana or marijuana products that does not violate the laws or regulations of this State or the limits established by the insurer who provides coverage for the marijuana distributor.*

2. A marijuana distributor shall not allow a marijuana establishment agent to transport marijuana or marijuana products unless the marijuana or marijuana products are:

(a) Except as otherwise provided in subsection 3, stored in a lockbox or locked cargo area within the vehicle being used for delivery;

(b) Not visible from outside the vehicle;

(c) Contained in sealed packages and containers which remain unopened during delivery;
and

(d) Tagged for the purpose of inventory tracking with a unique identifying label prescribed by the Department for the duration of transport.

↪ For the purpose of this subsection, the trunk of a vehicle is not considered to be a lockbox or locked cargo area unless the trunk cannot be accessed from within the vehicle and can only be accessed using a key which is different from the key used to access and operate the vehicle.

3. A marijuana distributor may allow a marijuana establishment agent to transport live marijuana plants in a fully enclosed, windowless, locked trailer or in a secured area inside the body of a locked van or truck if the plants are not visible from the outside.

4. A person shall not be present within any vehicle while it is being used for the transportation of marijuana or marijuana products unless the person is a marijuana establishment agent for the marijuana distributor providing transportation of the marijuana or marijuana products.

5. If the value of the marijuana and marijuana products being transported by a marijuana distributor in a vehicle, as reported on the transportation manifest as the insured

fair market wholesale value, exceeds \$25,000, the marijuana distributor shall ensure not fewer than two marijuana establishment agents of the marijuana distributor accompany the vehicle.

6. Each marijuana establishment agent who loads or unloads a vehicle for the transportation of marijuana or marijuana products shall perform the loading or unloading within view of the video surveillance system of a marijuana establishment.

Sec. 216. 1. *A marijuana distributor that also holds a license for a marijuana establishment of another type and that is transporting marijuana or marijuana products between its own marijuana establishments located within the same building, within contiguous buildings or between buildings located within 500 feet of each other is not required to use a vehicle to perform the transportation.*

2. A marijuana distributor may use any motor vehicle that can legally be operated on the highways of this State and that meets the requirements of this section to transport marijuana and marijuana products.

3. Before using a motor vehicle to transport marijuana or marijuana products, a marijuana distributor must obtain the approval of the Department for the use of the motor vehicle. Upon approving a motor vehicle for use to transport marijuana or marijuana products, the Department will issue an identification card containing such information as the Department determines to be necessary which must be kept inside the motor vehicle at all times.

4. A marijuana distributor shall ensure that each motor vehicle used to transport marijuana or marijuana products:

(a) Has no advertising, signage or other markings relating to marijuana; and

(b) Is equipped with an audible car alarm.

5. A marijuana distributor shall provide adequate care for perishable marijuana products including, without limitation, refrigeration during transportation, if required. Any method for temperature control used during transportation must be approved by the Department before use. If a potentially hazardous marijuana product is being transported, the potentially hazardous marijuana product must be maintained at a temperature of less than 41°F (5°C) throughout transportation.

6. Each marijuana distributor shall maintain at least one motor vehicle using a method approved by the Department for temperature control during transportation.

7. The Department or its agent may inspect each motor vehicle used for transportation of marijuana or marijuana products by a marijuana distributor pursuant to sections 85 and 86 of this regulation.

Sec. 217. 1. A marijuana distributor may transport marijuana or marijuana products between multiple marijuana establishments, but shall not simultaneously transport any other item unless the item is marijuana paraphernalia or merchandise, packaging or a promotional item directly related to the marijuana or marijuana product.

2. A marijuana distributor shall not transport marijuana or marijuana products unless:

(a) During the transportation of marijuana or marijuana products, the driver of a motor vehicle for a marijuana distributor carries in the motor vehicle:

(1) Proof of valid insurance coverage in an amount required by the laws of this State;

(2) A copy of the license of the marijuana distributor;

(3) The marijuana establishment agent registration card or verification of temporary authorization of the driver;

(4) The valid driver's license of the driver; and

(5) The valid registration for the motor vehicle.

(b) All drivers used by the marijuana distributor are bonded in an amount sufficient to cover any claim that could be brought against the driver or the marijuana distributor discloses to all parties that such drivers are not bonded.

(c) The hours in which the marijuana distributor provides transportation are reasonable to allow for the delivery of marijuana and marijuana products to marijuana establishments during the operating hours of the marijuana establishments.

(d) The transportation is conducted only within the borders of this State.

(e) The marijuana establishment agent who transports marijuana or marijuana products only travels to and from marijuana establishments and does not make any unnecessary stops that are not disclosed in the trip plan and transportation manifest. The marijuana establishment agent may make a stop for fuel as necessary and keep a list of designated fuel stops along the route for submission to the Department upon request.

3. A marijuana distributor shall notify the Department using means determined by the Department if a motor vehicle being used for the transportation of marijuana or marijuana products by the marijuana distributor is stopped at a location other than a marijuana establishment or designated fuel stop, is involved in a motor vehicle crash or breaks down resulting in scheduled travel being interrupted for more than 2 hours.

4. A marijuana distributor shall use the seed-to-sale tracking system approved by the Department for any transportation of marijuana or marijuana products between marijuana establishments that are not co-located.

Sec. 218. *1. Each marijuana distributor shall maintain a storage area for marijuana and marijuana products which includes at least one area which is temperature controlled. The area which is temperature controlled shall be maintained in a commercial food grade unit which is kept at a temperature of less than 41°F (5°C) while storing potentially hazardous marijuana products.*

2. The storage area for marijuana and marijuana products maintained pursuant to subsection 1 must be a separate, enclosed, locked facility. Products unrelated to the business of the marijuana distributor, including, without limitation, products containing alcohol, must not be stored with marijuana or marijuana products. Within the storage area, marijuana or marijuana products may only be stored in a secure, locked device, cabinet, room or motor vehicle within the storage area which is protected by a lock or locking mechanism that meets at least the security rating established by Underwriters Laboratories for key locks.

3. If a marijuana distributor experiences an unusual or extraordinary circumstance beyond its control as part of its normal business operations in providing transportation of marijuana or marijuana products and the marijuana distributor determines that it is necessary to use its storage area for the temporary storage of marijuana or marijuana products, the marijuana distributor shall submit to the Department a notice of temporary storage of marijuana or marijuana products.

4. A marijuana distributor shall not store marijuana or marijuana products for more than 3 days without written consent from the Department.

5. A marijuana distributor shall verify the inventory of a motor vehicle after the inventory is off-loaded into storage and before the inventory is on-loaded onto a motor vehicle from storage.

6. A marijuana distributor shall make its premises, including, without limitation, its storage area, available to the Department for inspection during normal business hours without notice.

Sec. 219. 1. Any edible product containing marijuana must:

(a) Be clearly and unambiguously packaged as marijuana with the words "THIS IS A MARIJUANA PRODUCT" in bold type that clearly identifies that the product contains marijuana;

(b) Be packaged in a manner which is not modeled after a brand of products primarily consumed by or marketed to children;

(c) Be presented in packaging which does not contain an image of a cartoon character, mascot, action figure, balloon or toy, except that such an item may appear in the logo of the marijuana product manufacturing facility which produced the product; and

(d) Not be packaged or marketed as candy.

2. When sold at a retail marijuana store, any edible product containing marijuana must be packaged in opaque, child-resistant packaging in accordance with 16 C.F.R. Part 1700 and the standards specified in subsection 3 or 4. The child-resistant packaging must maintain its

effectiveness for multiple openings before leaving the retail marijuana store with the consumer.

3. Except as otherwise provided in subsection 4, marijuana products in solid or liquid form must be packaged in:

- (a) Plastic which is 4 mils or more in thickness; or*
- (b) If the product is in liquid form, a food-grade bottle.*

4. Marijuana products in liquid form and concentrated marijuana must be packaged using a resealable cap in a container that:

- (a) Clearly demarks each serving of marijuana in a way that enables a reasonable person to intuitively determine how much of the product constitutes a single serving of THC; and*
- (b) Includes a device that allows a reasonable person to intuitively measure and serve a single serving of THC.*

↪ The portion of such a container that demarks each serving of marijuana need not be opaque.

5. Any container or packaging containing usable marijuana, concentrated marijuana or marijuana products must protect the contents from contamination and must be of a food grade material.

6. An edible marijuana product must be sealed in a container which is not transparent and sold in packaging which is opaque.

7. Each single serving in a multiple-serving edible marijuana product must be physically demarked in a way that enables a reasonable person to intuitively determine how much of the edible marijuana product constitutes a single serving. Each demarked serving must be easily

separable in a manner that allows an average person who is 21 years of age or over to physically separate, with minimal effort, an individual serving of the edible marijuana product.

8. If an edible marijuana product is of a kind that is impracticable to clearly demark each serving of marijuana or to make each serving easily separable, the edible marijuana product must:

- (a) Contain not more than 10 milligrams of THC per unit of sale; or*
- (b) Be sold in a package that contains more than one individually wrapped single-serving edible marijuana product.*

Sec. 220. *Each marijuana cultivation facility, marijuana product manufacturing facility and retail marijuana store shall:*

- 1. Use for labeling all marijuana and marijuana products the standard label described in sections 222 to 226, inclusive, of this regulation;*
- 2. Exercise strict control over labeling materials issued for use in labeling operations for marijuana and marijuana products;*
- 3. Carefully examine labeling materials issued for a batch for identity and conformity to the labeling specified in the applicable production or control records; and*
- 4. Have and follow written procedures describing in sufficient detail the control procedures employed for the issuance of labeling.*

Sec. 221. *A marijuana cultivation facility or marijuana product manufacturing facility shall not label usable marijuana, concentrated marijuana or marijuana products as “organic” unless the marijuana plants and all ingredients used are produced, processed and certified in*

a manner that is consistent with the national organic standards established by the United States Department of Agriculture in accordance with the Organic Foods Production Act of 1990, 7 U.S.C. §§ 6501 et seq.

Sec. 222. 1. *Unless preparing bulk packages only for delivery to another marijuana establishment and not for sale to a consumer, a marijuana establishment that packages marijuana or marijuana products must individually package, label and seal the marijuana or marijuana products in a single package for sale. A retail marijuana store shall only sell marijuana or marijuana products in a single package which must not contain:*

(a) More than 1 ounce of usable marijuana or one-eighth of an ounce of concentrated marijuana.

(b) For a marijuana product sold as a capsule, more than 100 milligrams of THC per capsule or more than 800 milligrams of THC per package.

(c) For a marijuana product sold as a tincture, more than 800 milligrams of THC.

(d) For a marijuana product sold as an edible marijuana product, more than 100 milligrams of THC.

(e) For a marijuana product sold as a topical product, a concentration of more than 6 percent THC or more than 800 milligrams of THC per package.

(f) For a marijuana product sold as a suppository or transdermal patch, more than 100 milligrams of THC per suppository or transdermal patch or more than 800 milligrams of THC per package.

(g) For any other marijuana product, more than 800 milligrams of THC.

2. An edible marijuana product must be packaged in a manner which indicates the number of servings of THC in the product, measured in servings of a maximum of 10 milligrams of THC per serving, and include a statement that the edible marijuana product contains marijuana and its potency was tested with an allowable variance of plus or minus 15 percent.

3. For marijuana or marijuana products that are intended to be sold to a consumer, the text used on all labeling must be printed in at least 8-point font and may not be in italics.

Sec. 223. *1. A marijuana cultivation facility shall label all marijuana before it sells the marijuana to a retail marijuana store and shall securely affix to the package a label that includes, without limitation, in legible English:*

- (a) The name of the marijuana establishment and its license number;*
- (b) If the marijuana establishment is operated by a dual licensee, the number of the medical marijuana establishment registration certificate of the cultivation facility operated by the dual licensee;*
- (c) The batch number;*
- (d) The lot number;*
- (e) The date of final harvest;*
- (f) The date of final testing;*
- (g) The date on which the product was packaged;*
- (h) The cannabinoid profile and potency levels and terpenoid profile of the top three terpenes as determined by the marijuana testing facility, which may include the potential total THC but must not include any other calculated level of THC;*

- (i) If the product is perishable, the expiration date;*
 - (j) The quantity of marijuana being sold; and*
 - (k) A warning that states: "THIS IS A MARIJUANA PRODUCT."*
- 2. The label required by subsection 1 for a container or package containing usable marijuana sold by a marijuana cultivation facility must be in substantially the following form:*

<p><i>SG'S NURSERY</i></p> <p><i>License Number: 123 456 789 001 0001</i></p> <p><i>Registration Certificate Number: 543 210789 000 0100</i></p> <p><i>(if applicable)</i></p> <p><i>THIS IS A MARIJUANA PRODUCT</i></p> <p><i>Batch Number:</i></p> <p><i>1234</i></p> <p><i>Lot Number:</i></p> <p><i>1234</i></p> <p><i>Final Harvest Date:</i></p> <p><i>01/01/2017</i></p>
--

Final Testing Date: 01/15/2017

Packaged on: 01/17/2017

Best if used by: 03/17/2017

16.7% THC 1.5% CBD 0.3% CBN

***Myrcene 5.6 mg/g Limonene 5.1 mg/g Valencene
3.5 mg/g***

Net Weight: 2 lbs.

Sec. 224. 1. A marijuana product manufacturing facility shall label all edible marijuana products before it sells the edible marijuana products to a retail marijuana store and shall include on the packaging or securely affix to the package a label that includes, without limitation, in legible English and in a manner which must not mislead consumers:

(a) The name of the marijuana establishment and its license number;

(b) If the marijuana establishment is operated by a dual licensee, the number of the medical marijuana establishment registration certificate of the facility for the production of edible marijuana products or marijuana-infused products, as defined in NRS 453A.105, operated by the dual licensee;

(c) The production run number;

- (d) The words “Keep out of reach of children”;*
- (e) The date of production;*
- (f) The date of final testing;*
- (g) The date on which the product was packaged;*
- (h) The cannabinoid profile and potency levels and terpenoid profile of the top three terpenes as determined by the marijuana testing facility, which may include the potential total THC but must not include any other calculated level of THC;*
- (i) If the product is perishable, the expiration date;*
- (j) The total amount of THC in the edible marijuana product, measured in milligrams;*
- (k) The total amount of THC in each serving of the edible marijuana product and a notice that the actual amount of THC may be within 15 percent of the stated amount;*
- (l) A list of all ingredients and all major food allergens as identified in 21 U.S.C. § 343;*
- (m) The net weight of the product;*
- (n) If concentrated marijuana was added to the product or if the product consists solely of concentrated marijuana, a disclosure of the type of extraction process used and any solvent, gas or other chemical used in the extraction process or any other compound added to the concentrated marijuana; and*
- (o) A warning that states: “THIS IS A MARIJUANA PRODUCT.”*

2. The label required by subsection 1 for a container or package containing concentrated marijuana or edible marijuana products sold by a marijuana product manufacturing facility must be in substantially the following form:

DC's Marijuana Products

License Number: 123 456 789 001 0001

Registration Certificate Number: 543 210789 000 0010

(if applicable)

Production Run Number: 1234

THIS IS A MARIJUANA PRODUCT

Keep out of reach of children

Produced on: 01/01/2017

Final Testing Date: 01/15/2017

Packaged on: 01/17/2017

Best if used by: 03/17/2017

Cannabinoid profile:

Terpenoid profile:

Total THC content:

THC content per serving +/- 15%:

*This product contains concentrated marijuana
produced with butane.*

Ingredients: Wheat, Sugar, Milk Chocolate

*Allergy Warning: Peanuts, Tree Nuts, Eggs, Wheat,
Soy*

Net Weight: 100mg

Sec. 225. 1. *A retail marijuana store must affix to each container or package containing usable marijuana sold at retail, if not already included on the container or package, a label which must include, without limitation:*

(a) The business or trade name and the license number of the marijuana cultivation facility that cultivated and sold the usable marijuana.

(b) If the marijuana cultivation facility is operated by a dual licensee, the number of the medical marijuana establishment registration certificate of the cultivation facility operated by the dual licensee.

(c) The batch number.

(d) The lot number.

(e) The date and quantity sold, including the net weight measured in ounces and grams or by volume, as appropriate.

(f) The name and address of the retail marijuana store.

(g) The cannabinoid profile and potency levels and terpenoid profile as determined by the marijuana testing facility, which may include the potential total THC but must not include any other calculated level of THC.

(h) A warning that states: "This product may have intoxicating effects and may be habit forming."

(i) The statement: "This product may be unlawful outside of the State of Nevada."

(j) The date on which the marijuana was harvested.

(k) A warning that states: "THIS IS A MARIJUANA PRODUCT."

2. The label required by subsection 1 for a container or package containing usable marijuana sold at retail must be in substantially the following form:

<p><i>JP's Plant Emporium</i></p> <p><i>License Number: 123 456 789 001 0001</i></p> <p><i>Registration Certificate Number: 543 210789 000 0010</i></p> <p><i>(if applicable)</i></p> <p><i>THIS IS A MARIJUANA PRODUCT</i></p> <p><i>Batch #: 1234</i></p> <p><i>Lot #: 1234</i></p>
--

Final harvest: 01/01/2017

by

We Care Retail Marijuana Store

123 Main Street, Carson City, NV 89701

WARNING:

*This product may have intoxicating effects and may be
habit forming.*

16.7% THC 1.5% CBD 0.3% CBN

*Myrcene 5.6 mg/g Limonene 5.1 mg/g Valencene
3.5 mg/g*

Net Weight: .25 ounces (7 grams)

*This product may be unlawful outside the State of
Nevada.*

**Sec. 226. 1. A retail marijuana store must affix to each container or package
containing edible marijuana products sold at retail and affix to or include with each container**

or package containing concentrated marijuana or marijuana products sold at retail a label which must not mislead consumers and must include, without limitation:

(a) The business or trade name and the license number of the marijuana product manufacturing facility that extracted and sold the concentrated marijuana or manufactured and sold the product.

(b) If the marijuana product manufacturing facility is operated by a dual licensee, the number of the medical marijuana establishment registration certificate of the facility for the production of edible marijuana products or marijuana-infused products operated by the dual licensee.

(c) The production run number that accounts for all lot numbers of all marijuana used to extract the concentrated marijuana or create the product, as recorded in the inventory control system of the marijuana product manufacturing facility that sold the concentrated marijuana or product.

(d) The name and address of the retail marijuana store.

(e) The date on which the concentrated marijuana was extracted or the product was manufactured.

(f) The date on which the concentrated marijuana or product was packaged.

(g) If the product is perishable, a suggested use-by date.

(h) The cannabinoid profile and potency levels and terpenoid profile of the product, as determined by the marijuana testing facility that tested the product, which, except as otherwise provided in paragraph (i), may include the potential total THC but must not include any other calculated level of THC.

(i) If the product is an edible marijuana product, the measurements of THC included on the label must include only the delta-9-tetrahydrocannabinol in the edible marijuana product.

(j) The total amount of THC in each serving of the product and a notice that the actual amount of THC may be within 15 percent of the stated amount.

(k) A list of all ingredients and all major food allergens as identified in 21 U.S.C. § 343.

(l) The concentration of THC in the product, if applicable.

(m) The net weight of the marijuana or marijuana product.

(n) A warning that states: "Caution: When eaten or swallowed, the intoxicating effects of this drug may be delayed by 2 or more hours."

(o) If concentrated marijuana or a marijuana extract was added to the product, a disclosure of the type of extraction process and any solvent, gas or other chemical used in the extraction process, or any other compound added to the concentrated marijuana or the marijuana extract.

(p) A warning that states: "This product may have intoxicating effects and may be habit forming."

(q) A warning that states: "Keep out of reach of children."

(r) A statement that: "This product may be unlawful outside of the State of Nevada."

(s) A warning that states: "THIS IS A MARIJUANA PRODUCT."

2. The label required by subsection 1 for a container or package containing concentrated marijuana or marijuana products sold at retail must be in substantially the following form:

***We Care Retail Marijuana Store
123 Main Street, Carson City, NV 89701***

THIS IS A MARIJUANA PRODUCT

Date Sold: 3/27/2017

Cookie

Net Weight: 2oz (56 grams)

Produced on: 1/1/2017

Final Testing Date: 1/15/2017

Packaged on: 1/17/2017

Best if used by: 6/3/2017

Cannabinoid profile:

Terpenoid profile:

THC content per serving +/- 15%:

***CAUTION: When eaten or swallowed the intoxicating
effects of this product can be delayed by 2 or more hours.***

Keep out of reach of children

This product may be unlawful outside the State of Nevada.

Manufactured at: KC's Kitchen

License Number: 321654987101 0401

***Registration Certificate Number: 543 210789 000 0010 (if
applicable)***

Production Run #5463

***INGREDIENTS: Flour, Butter, Canola Oil, Sugar,
Chocolate, Marijuana, Strawberries***

CONTAINS ALLERGENS: Milk, Wheat

Contains marijuana extract processed with butane.

Contains concentrated marijuana produced with CO2.

**WARNING: This product may have intoxicating effects
and may be habit forming.**

Sec. 227. 1. A retail marijuana store must provide with all usable marijuana sold at retail accompanying material that discloses any pesticides applied to the marijuana plants and growing medium during production and processing.

2. A retail marijuana store must provide with all usable marijuana and marijuana products sold at retail a written notification which contains the following warnings:

(a) That marijuana and marijuana products must be kept out of the reach of children.

(b) That marijuana and marijuana products can cause severe illness in children.

(c) That allowing children to ingest marijuana or marijuana products or storing marijuana or marijuana products in a location which is accessible to children may result in an investigation by an agency which provides child welfare services or criminal prosecution for child abuse or neglect.

(d) "THE INTOXICATING EFFECTS OF MARIJUANA MAY BE DELAYED BY 2 HOURS OR MORE AND USERS OF MARIJUANA PRODUCTS SHOULD INITIALLY INGEST A SMALL AMOUNT OF THE PRODUCT CONTAINING NO MORE THAN 10 MILLIGRAMS OF THC, THEN WAIT AT LEAST 2 HOURS BEFORE INGESTING ANY ADDITIONAL AMOUNT OF THE PRODUCT."

(e) "This product may have intoxicating effects and may be habit forming. Smoking is hazardous to your health."

(f) "Ingesting marijuana or marijuana products with alcohol or other drugs, including prescription medication, may result in unpredictable levels of impairment and a person should consult with a physician before doing so."

(g) "There may be health risks associated with consumption of this product."

(h) "Pregnant women should consult with a physician before ingesting marijuana or marijuana products."

(i) "Marijuana or marijuana products can impair concentration, coordination and judgment. Do not operate a vehicle or machinery under the influence of marijuana or marijuana products."

(j) "Ingestion of any amount of marijuana or marijuana products before driving may result in criminal prosecution for driving under the influence."

3. The text used on all accompanying material and warnings must be printed in at least 12-point font and may not be in italics.

Sec. 228. Each marijuana cultivation facility, marijuana product manufacturing facility and retail marijuana store shall:

- 1. Examine packaged and labeled products during finishing operations to provide assurance that the containers and packages have the correct labels;*
- 2. Collect a representative sample of units at the completion of finishing operations and ensure that the samples are visually examined for correct labeling; and*
- 3. Record the results of the examinations performed pursuant to subsections 1 and 2 in the applicable production or control records.*

Sec. 229. 1. *Except as otherwise provided in subsection 3, on or before January 1, 2019, each single-serving edible marijuana product and each individual serving containing not more than 10 milligrams of THC of a multiple-serving edible marijuana product must be stamped or molded with a symbol developed by the Department to indicate that the product contains marijuana.*

2. *An edible marijuana product that is impractical to stamp or mold with a symbol, including, without limitation, bulk goods or powders, must be packaged in a child-resistant container in individual servings containing not more than 10 milligrams of THC.*

3. *An edible marijuana product in liquid form which is packaged as required by section 219 of this regulation need not be stamped or molded as described in this section.*

Sec. 230. 1. *A marijuana establishment:*

(a) Shall not engage in advertising which contains any statement or illustration that:

(1) Is false or misleading;

(2) Promotes overconsumption of marijuana or marijuana products;

(3) Depicts the actual consumption of marijuana or marijuana products; or

(4) Depicts a child or other person who is less than 21 years of age consuming marijuana or marijuana products or objects suggesting the presence of a child, including, without limitation, toys, characters or cartoons, or contains any other depiction which is designed in any manner to be appealing to or encourage consumption of marijuana or marijuana products by a person who is less than 21 years of age.

(b) Shall not advertise in any publication or on radio, television or any other medium if 30 percent or more of the audience of that medium is reasonably expected to be persons who are less than 21 years of age.

(c) Shall not place an advertisement:

(1) Within 1,000 feet of a public or private school, playground, public park or library, but may maintain such an advertisement if it was initially placed before the school, playground, public park or library was located within 1,000 feet of the location of the advertisement;

(2) On or inside of a motor vehicle used for public transportation or any shelter for public transportation;

(3) At a sports or entertainment event to which persons who are less than 21 years of age are allowed entry;

(4) On or inside of a motor vehicle used by a marijuana establishment for private transportation;

(5) On signs carried by a natural person, including, without limitation, handbills, pamphlets, cards or other types of advertisements that are distributed to the general public, but excluding an advertisement placed in a newspaper of general circulation, trade publication or other form of print media; and

(6) Where prohibited by local ordinance.

(d) Shall not advertise or offer any marijuana or marijuana product as “free” or “donated” without a purchase.

(e) Shall ensure that all advertising by the marijuana establishment contains such warnings as may be prescribed by the Department, which must include, without limitation, the following words:

- (1) "Keep out of reach of children"; and*
- (2) "For use only by adults 21 years of age and older."*

2. A retail marijuana store shall post signs in prominent locations inside the retail marijuana store which state activities that are strictly prohibited and punishable by law, including, without limitation, the following statements:

- (a) "No minors permitted on the premises unless the minor holds a letter of approval and is accompanied by a designated primary caregiver";*
- (b) "No on-site consumption of any marijuana or marijuana products";*
- (c) "Distribution to persons under the age of 21 is prohibited";*
- (d) "Except for medical marijuana patients, possession of over 1 ounce of usable marijuana, one-eighth ounce of concentrated marijuana, an edible marijuana product containing more than 3,500 milligrams of THC or a combination of the three which exceeds the legal limit is prohibited"; and*
- (e) "Transportation of marijuana or marijuana products across state lines is prohibited."*

Sec. 231. *A marijuana establishment shall not use a name, logo, sign, advertisement or packaging unless the name, logo, sign, advertisement or packaging has been approved by the Department.*

Sec. 232. *The provisions of NRS 372A.200 to 372A.380, inclusive, which apply to:*

1. The excise tax on marijuana, as defined in NRS 372A.220, as amended by section 4 of Senate Bill No. 487, chapter 541, Statutes of Nevada 2017, at page 3730, also apply to the excise tax on marijuana imposed pursuant to NRS 453D.500.

2. A taxpayer, as defined in NRS 372A.250, as amended by section 6 of Senate Bill No. 487, chapter 541, Statutes of Nevada 2017, at page 3730, also apply to a marijuana cultivation facility.

Sec. 233. Marijuana and marijuana products sold pursuant to chapter 453D of NRS are subject to sales tax when sold at a retail marijuana store. Returns and payments must be submitted as provided in NRS 372.354 to 372.395, inclusive.

Sec. 234. 1. Each taxpayer shall, on or before the last day of the month immediately following each month for which the taxpayer is subject to the imposition of the excise tax on marijuana, file with the Department a return on a form prescribed by the Department and remit to the Department any tax due for the month covered by the return. Each such taxpayer shall file a return even if the taxpayer has no liability for the tax.

2. Each taxpayer shall pay the excise tax on marijuana to the Department upon the first sale of marijuana or marijuana products to a marijuana cultivation facility, marijuana product manufacturing facility, retail marijuana store or a consumer.

3. If a marijuana cultivation facility sells marijuana to another marijuana cultivation facility and pays to the Department the excise tax imposed by NRS 453D.500 on the sale, the excise tax imposed by NRS 453D.500 is not required for any subsequent wholesale sale of that marijuana.

4. Each marijuana cultivation facility and retail marijuana store shall keep all supporting documentation for verification that the excise tax imposed by NRS 453D.500 was paid on the first wholesale sale of marijuana.

5. The Department may require a marijuana establishment to submit a financial statement as determined to be necessary by the Department to ensure the collection of any taxes which may be owed by the marijuana establishment.

6. The Department will calculate the fair market value at wholesale using the reported sales or transfer of marijuana in each category of marijuana described in this subsection using the methodology described in paragraphs (a) to (f), inclusive. The fair market value at wholesale of:

(a) Marijuana bud must be calculated on the basis of the total weight of all marijuana bud that is sold, excluding the inadvertent inclusion of an inconsequential amount of marijuana bud in a sale of marijuana trim.

(b) Marijuana trim must be calculated on the basis of the total weight of all marijuana trim that is sold, including the total weight of an inconsequential amount of marijuana bud which is inadvertently included.

(c) Immature marijuana plants must be calculated on the basis of the total number of immature marijuana plants sold.

(d) Whole wet marijuana plants must be calculated on the basis of the total weight of the entire whole wet marijuana plant. A marijuana cultivation facility shall maintain records of the time each batch containing whole wet marijuana plants is harvested and weighed which

contain the weight of each plant, are in writing and are created contemporaneously with the harvesting and weighing. To determine the total weight of the whole wet marijuana plant:

(1) The plant must not undergo any further processing, including, without limitation, drying the plant and subsequently selling separately the marijuana bud and marijuana trim from the plant, before being weighed; and

(2) The plant must be weighed within 2 hours after the harvesting of the batch containing the plant and without any further processing of the plant, including, without limitation, increasing the ambient temperature of the room in which the plant is held or drying, curing or trimming the plant. If the whole wet marijuana plant is not weighed within 2 hours after the harvest of the batch containing the plant or is subjected to further processing, the fair market value at wholesale of the plant must not be calculated using this paragraph and must be calculated using paragraph (a) or (b).

(e) Marijuana seeds must be calculated on the basis of the total number of seeds sold.

(f) Any other category of marijuana must be determined by the Department on a case-by-case basis.

7. As used in this section:

(a) "Excise tax on marijuana" has the meaning ascribed to it in NRS 372A.220, as amended by section 4 of Senate Bill No. 487, chapter 541, Statutes of Nevada 2017, at page 3730.

(b) "Taxpayer" has the meaning ascribed to it in NRS 372A.250, as amended by section 6 of Senate Bill No. 487, chapter 541, Statutes of Nevada 2017, at page 3730.

Sec. 235. *Within 30 days after the effective date of this regulation and on November 1 of each year thereafter, the Department will reimburse the costs of each local government of carrying out the provisions of chapters 453A and 453D of NRS as follows:*

- 1. By distributing a total amount of \$1,500,000, divided equally, to each county; and*
- 2. By distributing a total amount of \$3,500,000 to each locality, divided on the basis of the population of each locality, to each locality in which a marijuana establishment or a medical marijuana establishment is located on:*

- (a) February 16, 2018, for the initial distribution pursuant to this subsection; and*
- (b) September 1 of each year for each subsequent distribution pursuant to this subsection.*

Sec. 236. *No employee of this State who is responsible for implementing or enforcing the provisions of this chapter or chapter 453D of NRS may have a direct or indirect financial interest in a marijuana establishment or be employed by or volunteer at a marijuana establishment.*

Sec. 237. *For the purposes of subsection 1 of NRS 453D.110, the maximum allowable quantity of marijuana is an amount that is:*

- 1. Equivalent to 1 ounce of usable marijuana other than concentrated marijuana;*
- 2. One-eighth ounce of concentrated marijuana containing not more than 3,500 milligrams of THC; and*
- 3. One-eighth ounce of concentrated marijuana or 3,500 milligrams of THC contained within one or more edible marijuana products.*

Sec. 238. *The Department may, upon findings made following a public hearing that the public interest will be supported by limiting the cultivation of marijuana in this State, limit the amount of marijuana cultivated within this State.*

Sec. 239. 1. *A marijuana establishment:*

(a) May only promote marijuana or a marijuana product through marketing the marijuana testing facility results on the label of the marijuana or marijuana product; and

(b) Must not use a marijuana testing facility or other laboratory to promote any other attributes of marijuana or a marijuana product.

2. *The provisions of this chapter governing labeling and testing of marijuana and marijuana products apply to all marijuana and marijuana products, including, without limitation, pre-rolls.*

Sec. 240. 1. *The Department may charge and collect a fee from any marijuana establishment that is involved in a complaint submitted to the Department by a consumer to recover the costs of investigating the complaint after the investigation is completed if the complaint is substantiated. The fee will be based upon the hourly rate established for each investigator of marijuana establishments as determined by the budget of the Department.*

2. *As used in this section, "substantiated" means supported or established by evidence or proof.*

Sec. 241. *Except as otherwise provided in NRS 239.0115 and section 242 of this regulation, any information received by the Department related to the security of a marijuana establishment is confidential and must not be disclosed by the Department.*

Sec. 242. 1. Except as otherwise provided in this section and NRS 239.0115, the Department will and any designee of the Department shall maintain the confidentiality of and shall not disclose the name or any other identifying information of any person who facilitates or delivers services pursuant to this chapter or chapter 453D of NRS. Except as otherwise provided in NRS 239.0115, the name and any other identifying information of any person who facilitates or delivers services pursuant to this chapter or chapter 453D of NRS are confidential, not subject to subpoena or discovery and not subject to inspection by the general public.

2. Notwithstanding the provisions of subsection 1, the Department or its designee may release the name and other identifying information of a person who facilitates or delivers services pursuant to this chapter or chapter 453D of NRS to:

(a) Authorized employees of the Department or its designee as necessary to perform official duties of the Department; and

(b) Authorized employees of state and local law enforcement agencies only as necessary to verify that a person is lawfully facilitating or delivering services pursuant to this chapter or chapter 453D of NRS.

3. Nothing in this section prohibits the Department from providing a local government with a copy of all information and documentation provided as part of an application to operate a marijuana establishment upon the request of the local government and with the prior consent of the applicant.

Sec. 243. A marijuana establishment shall not dispense or otherwise sell marijuana or marijuana products from a vending machine or allow such a vending machine to be installed at the interior or exterior of the premises of the marijuana establishment.

Sec. 244. The provisions of sections 23 to 246, inclusive, of this regulation shall be deemed to apply to the extent specified in any agreement with a tribal government in this State entered into pursuant to section 1 of Senate Bill No. 375, chapter 305, Statutes of Nevada 2017, at page 1617 (NRS 223.250).

Sec. 245. 1. Each component marijuana establishment retains its individual legal status as a separate entity from the combined marijuana establishment of which it is a part and each other component marijuana establishment which is a part of the same combined marijuana establishment.

2. The Department will not issue to a combined marijuana establishment a license for a marijuana establishment, but the combined marijuana establishment will instead be deemed to exist for the efficient operation and regulation of the component marijuana establishments which are a part of the combined marijuana establishment and will be issued a certificate of approval by the Department upon a determination by the Department that the combined marijuana establishment has complied with the provisions of this section.

3. The component marijuana establishments of a combined marijuana establishment may share a single, secured storage area if the inventory from each component marijuana establishment is securely segregated within the secured storage area apart from the inventory of all other component marijuana establishments.

4. The building infrastructure, security systems and other facilities, including, without limitation, common entrances, exits, break rooms, locker rooms, loading docks and other areas determined by the Department to be expedient for business and appropriate for the site, may be combined and shared among the component marijuana establishments of a combined marijuana establishment.

5. Each component marijuana establishment must be located in a commercial or industrial zone or overlay as approved by the locality and comply with all local ordinances and rules pertaining to zoning, land use and signage.

6. Except as otherwise provided in subsection 13, each component marijuana establishment within a combined marijuana establishment must be inspected before commencing operations and be ready to commence operations before any component marijuana establishment within the combined marijuana establishment may commence operations. A component marijuana establishment need not actually commence or intend to immediately commence operations to satisfy the requirements of this subsection.

7. For the purposes of subsection 6, a component marijuana establishment is ready to commence operations if the component marijuana establishment:

(a) Is a cultivation facility, as defined in NRS 453A.056, as amended by section 8 of Assembly Bill No. 422, chapter 540, Statutes of Nevada 2017, at page 3679 and section 22 of Senate Bill No. 487, chapter 541, Statutes of Nevada 2017, at page 3743, or marijuana cultivation facility and has demonstrated the successful installation and operation of lights, plumbing, heating, ventilation and air-conditioning systems, humidity control systems, carbon

dioxide control systems and all other growing technical facilities, including all related control systems, for at least one growing unit. A growing unit must:

(1) Be serviced by all building facilities and technology and have all other features described to perform growing operations at all stages of growth in the application for a medical marijuana establishment registration certificate or license for the cultivation facility or marijuana cultivation facility;

(2) Have the capacity to nourish clones, germinate seedlings, attain vegetative growth, flower plants to maturity, dry and cure cut plants, trim and package finished plants and store finished marijuana product in compliance with this chapter, chapters 453A and 453D of NRS and chapter 453A of NAC, as applicable; and

(3) Consist of one or more growing tables, enclosed pods or rooms.

(b) Is a facility for the production of edible marijuana products or marijuana-infused products, as defined in NRS 453A.105, as amended by section 11 of Assembly Bill No. 422, chapter 540, Statutes of Nevada 2017, at page 3680 and section 24 of Senate Bill No. 487, chapter 541, Statutes of Nevada 2017, at page 3744, or marijuana product manufacturing facility and has demonstrated the proper, safe installation of all extraction, cooking or other equipment and all plumbing, ventilation, solvent lines, electricity, electrical lines, refrigerators and all other production equipment.

8. A component marijuana establishment which has demonstrated that it is ready to commence operations pursuant to subsection 7 may expand operations within a previously inspected and approved space to the level described in its application for a license for a

marijuana establishment without further inspection or approval. The Department may inspect such a component marijuana establishment as often as it determines to be necessary.

9. Before the Department will issue a certificate of approval for a combined marijuana establishment, all walls, ceilings, floors, electrical cabling, plumbing, general lighting for purposes other than cultivation and ducting for heating, ventilation or air-conditioning systems for each component marijuana establishment must be completed as specified in the floorplan submitted to the Department as part of the application for a license for a marijuana establishment for the component marijuana establishment at a level sufficient to obtain a certificate of occupancy issued by the locality.

10. Each certificate of approval issued by the Department to a combined marijuana establishment must specify which types of marijuana establishments are approved to operate at the location of the combined marijuana establishment.

11. A combined marijuana establishment may:

(a) Allow the marijuana establishment agents or medical marijuana establishment agents of each component marijuana establishment to move between the component marijuana establishments of the combined marijuana establishment if each such marijuana establishment agent or medical marijuana establishment agent holds and carries on his or her person a marijuana establishment agent registration card or medical marijuana establishment agent registration card, as applicable, for each kind of marijuana establishment or medical marijuana establishment to be entered.

(b) Allow a marijuana establishment agent or medical marijuana establishment agent of any component marijuana establishment to perform work functions for any component

marijuana establishment if each such marijuana establishment agent or medical marijuana establishment agent holds and carries on his or her person a marijuana establishment agent registration card or medical marijuana establishment agent registration card, as applicable, for each kind of marijuana establishment or medical marijuana establishment at which work functions are performed.

(c) Share equipment which is not specific to the operation of a component marijuana establishment, including, without limitation, motor vehicles, among all component marijuana establishments.

(d) Not allow a component marijuana establishment to share equipment which is specific to the operation of the component marijuana establishment, including, without limitation, extraction devices which are specifically used by a marijuana product manufacturing facility or cultivation lights which are specifically used by a marijuana cultivation facility, with another component marijuana establishment.

12. Each component marijuana establishment shall maintain separate operations from other component marijuana establishments and the combined marijuana establishment of which the component marijuana establishment is a part by:

(a) Holding a license for a marijuana establishment or a medical marijuana establishment registration certificate and being individually approved, separate from all other marijuana establishments or medical marijuana establishments operating on the same parcel of real estate, to operate as a business by all relevant jurisdictions and authorities, as applicable.

(b) Maintaining separately from all other component marijuana establishments and being able to present financial records which comply with generally accepted accounting principles.

(c) Filing all financial disclosures and tax documents separately from all other component marijuana establishments.

13. A component marijuana establishment may submit a written request for an exception from the requirements of subsection 6. Such a written request must include a detailed justification of the necessity of the request. The Department may grant such a request for good cause shown, but will not consider any issues relating to financial outlays or difficulties with a vendor or supplier in preparing all component marijuana establishments for inspection to be good cause. If the Department grants such a request and the inspection of the component marijuana establishment which submitted the request is successful, the Department may permit the component marijuana establishment to operate for a period of time approved by the Department. Any certificate of approval issued to the combined marijuana establishment must be temporary and indicate that not all component marijuana establishments have been approved to operate. A final certificate of approval may only be issued to the combined marijuana establishment after each component marijuana establishment has satisfied the requirements of this section, paid all applicable fees and satisfied all applicable requirements of state or local law, regulation or ordinance.

Sec. 246. *A dual licensee shall:*

- 1. Comply with the provisions of chapter 453A of NAC with respect to the medical marijuana establishment operated by the dual licensee; and*
- 2. Combine the location and operations of the medical marijuana establishment and marijuana establishment operated by the dual licensee as provided in section 245 of this regulation.*

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS--NRS 233B.066
Informational Statement
LCB File No. R092-17

1. A clear and concise explanation of the need for the adopted permanent regulation

The need and purpose of the proposed permanent regulation is to establish procedures for the issuance, suspension or revocation of licenses issued by the Department of Taxation, provide operating requirements to licensed marijuana establishments, require monthly filing of returns and remittance of tax imposed on the sales of marijuana, require the maintenance of certain records, and provide for the inspection of such records relating to the regulation and taxation of marijuana pursuant to NRS 453D.

2. Description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary

The Department of Taxation solicited comments from the public by sending the notices of the workshop and hearing by email and fax as follows:

<u>Date of Notice</u>	<u>Workshop/Hearing</u>	<u>Date Held</u>
July 6, 2017	Definitions, Application and licensing requirement of education and training; Civil penalties, security, disposal and taxes	July 24, 2017
July 6, 2017	Distribution, delivery and storage; Retail stores	July 25, 2017
July 7, 2017	Cultivation; Testing facilities	July 26, 2017
July 7, 2017	Production and Manufacturing; Packaging and labeling; Signage, marketing and advertising	July 27, 2017
Dec. 16, 2017	Public Hearing	Jan. 16, 2018

The mailing list included 264 members of the Department's interested parties list and 511 members of its marijuana-specific interested parties list. The Nevada Taxpayers Association also mailed the notices of workshop and hearing to its list of interested parties. Notices were also posted at the Nevada State Library, various Department of Taxation locations throughout the state, and at the main public libraries in counties where an office of the Department of Taxation is not located. Comments were also solicited by direct email to other interested parties lists maintained by the Department.

Summary of public responses

The following general responses were received by email and mail prior to the adoption hearing:

- Request deletion of Section 242 that relates to confidentiality of any person who facilitates or delivers services.
- Request that publicly traded companies' 5 percent owners be exempt from the sundry requirements for owners.
- Provide impartial evaluation for awarding marijuana establishment licenses; grant higher merit points to non-retail license holders and those who have made a greater investment in building in the industry.
- Provide for language that allows for a third party or intermediary business to advertise delivery to consumers provided that the advertising lists the name of the licensed retail marijuana store and that any digital platform or other platform used meets the publicly disclosed criteria for such delivery as approved by the Department.
- Funds provided under Section 235, subsection 1 should be used to supplement, not replace, general fund revenues and their use should be limited to costs directly related to impacts from marijuana such as public safety, public health and social services. The distribution in subsection 2 based on population should be done so that incorporated cities receive credit for the populations within their corporate limits and counties receive credit for populations living in the unincorporated areas of the county.

Testimony given at the adoption hearing

- One person testified and asked to add hexa hydrocannabinol to the list of substances tested because it causes users to become sick.
- One person testified that tracking of purchases is too restrictive and causes users to turn to the black market.
- One person testified that advertising is too restrictive; the requirement to submit every advertisement to the Department is excessive and the time for approval by the Department is between 4 to 6 weeks which is too long; language is vague as to whether non marijuana product also needs to follow label requirements.
- One person testified that the language regarding sale of seeds and plants is vague.
- One person testified that unusable marijuana should be allowed to be recycled into various products.
- Seventeen people testified that the language related to scoring entities to determine which entity will receive a retail marijuana store license is vague and ambiguous; application process should be fair and impartial; the scoring does not represent the Nevada population; percentage allowed for each scoring category should be listed out in the regulation; many dispensaries already have cultivation license and end up buying their own product which eliminates the competition and creates a monopoly; vertical integration results in dispensaries having complete control of pricing.
- One person testified that the testing for Aspergillus results in a zero tolerance policy; the decision to test this product is based on a white paper from Colorado and not based on peer review or science. Thus, the testing requirement does not increase safety for the patient and is overly burdensome on industry.
- One person testified that section 86 subsection 5 regarding summary search and seizure power is too broad.
- Four people testified that they support the regulation and understand that the Department will work with industry to implement the regulations.

- One person testified and asked for language that allows for a third party or intermediary business to advertise delivery to consumers provided that the advertising lists the name of the licensed retail marijuana store and that any digital platform or other platform used meets the publicly disclosed criteria for such delivery as approved by the Department.
- One person requested deletion of Section 242 that relates to confidentiality of any person who facilitates or delivers services.
- One person requested that section 235 that relates to local government distribution should be related to the direct costs to the local government for safety.

An audio recording of the workshop and adoption hearing, or a copy of the record of proceedings of the adoption hearing, may be obtained by calling the Nevada Department of Taxation at (775) 684-2059, or by writing to the Department of Taxation at 1550 East College Parkway, Carson City, Nevada 89706. They may also be obtained by going to the Department's website <https://tax.nv.gov/uploadedFiles/taxnv.gov/Content/FAQs/R-092-17-V6-Department-Track-Changes.pdf> or e-mailing the Department at ghritz@tax.state.nv.us

3. **The number of persons who**
 - (a) **Attended the hearing:** 144
 - (b) **Testified at the hearing:** 27
 - (c) **Submitted written comments:** 6
4. **Contact information for each person identified in paragraphs (b) and (c) of number 3 above, if such information was provided to the agency conducting the hearing:**

Testified at the adoption hearing:

Cindy Brown
 Telephone number: 702-722-0166
 Business address: not provided
 Electronic mail address: abigpurplediamond@yahoo.com
 Name of entity or organization represented: patients

Jefferson W. Boswell
 Telephone number: 702-990-7272
 Business address: 3333 E Serene Avenue, Suite 200, Henderson, NV 89074
 Electronic mail address: jboswell@peelbrimley.com
 Name of entity or organization represented: Fairness in the Cannabis Industry, LLC

Mikel Alvarez
 Telephone number: 702-985-7097
 Business address: 1921 Western Avenue, Las Vegas, NV 89102
 Electronic mail address: mikel@terratechcorp.com
 Name of entity or organization represented: Terra Tech

Frank Fosco
 Telephone number: not provided
 Business address: not provided
 Electronic mail address: not provided
 Name of entity or organization represented: citizens of Nevada

Dr. Nick Spirtos
Telephone number: 702-326-0585
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Electronic mail address: nspirtos@wccenter.com
Name of entity or organization represented: The Apothecary Shoppe

Mark Bradley
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Business address: 1771 E Flamingo Road, Suite 201A, Las Vegas, NV 89119
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Name of entity or organization represented: Players Network and Green Leaf Farms

Amanda Connor
Telephone number: 702-750-9139
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Name of entity or organization represented: Nevada Cannabis Coalition

Michael Abrahams
Telephone number: 727-480-2576
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Electronic mail address: abrams@growsmith.com
Name of entity or organization represented: Growsmith

Brett Pojunis
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Electronic mail address: pojunis@gmail.com
Name of entity or organization represented: Libertarian party/Players Network

Jim Wadhams
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Name of entity or organization represented: Clear River

Steve Rosen
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Name of entity or organization represented: THC Nevada

Geoffrey Lawrence
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Name of entity or organization represented: Players Network

Dayvid Figler
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Name of entity or organization represented: Silver Sage LLC

Andrew Hallenbeck
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Name of entity or organization represented: Green Leaf Farms

Jennifer Solas
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Craig Rombough
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Jeramy Edgel
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Jason Henslee
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Irene Rombough
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Jason Sturtsman
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Joshua Hicks
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Barry Smith
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Name of entity or organization represented: Nevada Press Association

Wes Henderson
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Name of entity or organization represented: NV League of Cities

Will Adler
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Name of entity or organization represented: Sierra Cannabis Coalition

Riana Durrett
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Brett Scolari
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Name of entity or organization represented: Tryke Companies

Pat Lynch
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Name of entity or organization represented: Women's Radio

Provided written comments:

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Josh Hicks

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Barry Smith

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Mark Bradley

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Electronic mail address: mbradley@playersnetwork.com

Name of entity or organization represented: Players Network and Green Leaf Farms

Wes Henderson

Telephone number: 775-881-8273

Business address: 310 S Curry Street, Carson City, NV 89703

Electronic mail address: whenderson@nvleague.org

Name of entity or organization represented: NV League of Cities

The written comments can be obtained by calling the Nevada Department of Taxation at (775) 684-2030 or by writing to the Department of Taxation at 1550 East College Parkway, Carson City, Nevada 89706. They may also be obtained by going to the Department's website https://tax.nv.gov/FAQs/Marijuana_Proposed_Temporary_Regulation_T002-17/ or e-mailing the Department at ghritz@tax.state.nv.us.

5. **A description of how comment was solicited from affected businesses, a summary of their responses and an explanation of how other interested persons may obtain a copy of the summary**

In July 2017, the Department of Taxation prepared and disseminated draft language for the proposed permanent regulation R092-17 seeking input and information from small businesses regarding the impact of the language. The notice of workshop, agenda and proposed language were:

- Emailed by the Department to 264 members of its interested parties list, including members of a marijuana-specific interested parties list of 511
- Emailed by the Nevada Taxpayers Association to its list of interested parties

The workshops on the proposed language were held on the following dates:

- **Monday July 24, 2017**
 - Definitions
 - Application and licensing requirements & education and training
 - Civil penalties, security, disposal, and taxes
- **Tuesday July 25, 2017**
 - Distribution, delivery, and storage
 - Retail stores
- **Wednesday July 26, 2017**
 - Cultivation facilities
 - Testing facilities
- **Thursday July 27, 2017**
 - Product manufacturing facilities
 - Packaging and labeling & signage, marketing, and advertising
 -

Thirteen (13) interested parties submitted public comment. Eleven (11) of the responses were from Nevada-based marijuana businesses or their representatives, one response was from local government, and one response was from a medical marijuana patient advocate.

The content of the responses can be summarized into the following major themes:

- **Labels and Packaging** - Respondents said that fruit images should be allowed on labels and packaging; requiring both stamping and individually wrapped edibles is excessive; provide alternatives to packaging of glass bottles and liquids; allow a smaller font size for smaller products; allowing variance of +/- 15% is overly broad.
- **Department Preapproval** - Respondents asked to add animals to the allowable images for logos or names; approve logos of licensed product from another state; clarify what sources for non-marijuana ingredients need approval; allow for branded products to be sold at retail marijuana stores; shortened review time.
- **Definitions** - Respondents asked to include that industrial hemp is not marijuana; update growing unit definition.
- **Disposal** - Respondents asked to provide alternatives to grinding roots and stalks; require notice to the Department of unusable marijuana; provide the ability to return product if unusable.
- **Penalties** - Respondents asked to remove language regarding impaired staff; add bad faith complaints; allow establishments to obtain investigative file during discovery; do not issue civil penalties unless establishment is grossly negligent, refuses to correct violations, or repeatedly violates the same regulation.
- **Concentrated Cannabis** - Respondents asked to increase the purchase limit of THC in concentrated cannabis and that total THC concentration should be noted in a percentage and the total quantity of THC noted in milligrams as appropriate for the product.

- **Advertising** - Respondents said that fruit images should be allowed in advertising; photographs of approved products should be acceptable; allow submission of data on youth viewership for advertising approval; do not require preapproval if falls within advertising guidelines; do not require preapproval of social media, websites, blog posts, e-mails, and text updates; consider not allowing advertising on motor vehicles used for private transportation.
- **Distributor Requirements** - Respondents asked to adjust amount required for liquid assets; maximum load limits should be changed; do not require distributor vehicles to maintain a temperature of 41 degrees; cash management for transportation/distribution (trackable/traceable to a specific customer and invoice) should be included in the regulations.
- **Application and Licensing** - Respondents asked that we give preference for an establishment who has local government approval but no medical marijuana registration certificate; add additional reasons when a license will not be renewed.
- **Testing** - Respondents requested that we keep testing consistent with medical marijuana regulations; update minimum sample size; remove shelf-life testing; remove the requirement to test for any pesticide not approved by the Department of Agriculture at any detectable amount.
- **Local Governments** - Respondents asked that we prohibit outdoor cultivation; include local authorities during inspection; notify law enforcement of surveillance system malfunctions; provide application information for both establishments and agent cards to local government; provide a fee to the local fire protection agency; allow for local inspections.
- **Taxes** - Respondents requested that we clarify that retail excise tax does not apply to non-marijuana products.

Anyone interested in obtaining a copy of the summary of responses can call the Nevada Department of Taxation at (775) 684-2059 or write to the Department at 1550 East College Parkway, Carson City, Nevada 89706, or e-mail the Department at ghritz@tax.state.nv.us

6. **If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change**

The Department adopted the proposed regulation with extensive changes made after the workshop and public comment period. The changes were made to address many of the themes identified in item #5 above. After further consideration, research and analysis, if a requested change was not made, it was rejected because it did not comply with the statutory provision or was not in the interest of public health and safety.

7. **The estimated economic effect of the regulation on the business which it is to regulate and on the public:**

- (a) **The estimated adverse and beneficial economic effect**

To business:

The proposed permanent regulation presents no foreseeable or anticipated adverse economic effect on the businesses which it is to regulate. On the other hand, the businesses that qualify for

marijuana establishment licenses will realize the beneficial economic effects of expanding from a medical-only market into a medical and adult-use market.

To the public:

There is no foreseeable or anticipated adverse economic effect to the public. Conversely, the proposed permanent regulation provides a beneficial economic effect to the public by providing the public an opportunity to purchase lab-tested product from a state-licensed and regulated retailer. Excess program revenues are transferred to the State Distributive School Account, and revenue from the retail excise tax is transferred to the state's "Rainy Day" fund.

(b) Estimated immediate and long term economic effect

To business:

The businesses that qualify for marijuana establishment licenses will realize immediate economic effects of expanding from a medical-only market into a medical and adult-use market. The proposed permanent regulation presents no foreseeable or anticipated long term economic effects to business.

To the public:

The public will realize an immediate economic effect of increased public safety and protection due to the stringent regulatory requirements. The proposed permanent regulation presents no foreseeable or anticipated long term economic effects to the public.

8. The estimated cost to the agency for enforcement of the proposed regulation

The proposed permanent regulation presents no significant anticipated cost or decrease in costs for enforcement other than the costs to implement the statutory provision.

9. A description of any regulations of other State or governmental agencies which the regulation overlaps or duplicates and a statement explaining why the duplication or overlap is necessary; If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency

In some cases, the regulation does overlap or duplicate the medical marijuana provisions found in NRS 453A and NAC 453A and to the extent possible mirrors those regulations so as not to subject businesses with dual medical and adult-use licenses with conflicting regulations. The overlap is necessary because medical marijuana provisions are provided in NRS and NAC 453A and adult-use provision are found in NRS and NAC 453D.

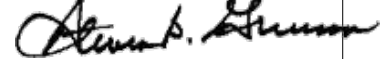
10. If the regulation includes provisions that are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.

The Department is not aware of any similar federal regulations of the same activity in which the state regulations are more stringent.

11. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

Section 85 provides for the reimbursement of costs incurred by the Department to conduct a preliminary

walk-through prior to an inspection; Section 92 provides for the reimbursement of all costs incurred by the Department to review or investigate a change in ownership; Section 94 provides for an application fee for an agent card; Section 102 allows a fee for the oversight of a marijuana establishment; Section 109 requires the marijuana establishment to pay a fee assessed by the independent contractor for using the seed-to-sale tracking system; Section 115 provides for reimbursement of all costs incurred by the State or a locality in cleaning up, mitigating or remedying any environmental damage; Section 240 allows for the Department to collect a fee for costs of investigating a complaint. These fees are not additional fees but mirror the fees provided for in NRS 453A and NAC 453A to bring the adult-use marijuana program into conformity with the medical marijuana program. As such, the Department does not believe there will be significant additional revenue generated. All fees will be deposited in accordance with NRS 453D.



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**DISTRICT COURT
CLARK COUNTY, NEVADA**

13 SERENITY WELLNESS CENTER, LLC, a
14 Nevada limited liability company, TGIG, LLC, a
15 Nevada limited liability company, NULEAF
16 INCLINE DISPENSARY, LLC, a Nevada
17 limited liability company, NEVADA HOLISTIC
18 MEDICINE, LLC, a Nevada limited liability
19 company, TRYKE COMPANIES SO NV, LLC,
20 a Nevada limited liability company, TRYKE
21 COMPANIES RENO, LLC, a Nevada limited
22 liability company, PARADISE WELLNESS
23 CENTER, LLC, a Nevada limited liability
24 company, GBS NEVADA PARTNERS, LLC, a
25 Nevada limited liability company, FIDELIS
26 HOLDINGS, LLC, a Nevada limited liability
27 company, GRAVITAS NEVADA, LLC, a
28 Nevada limited liability company, NEVADA
PURE, LLC, a Nevada limited liability company,
MEDIFARM, LLC, a Nevada limited liability
company, DOE PLAINTIFFS I through X; and
ROE ENTITY PLAINTIFFS I through X,

Plaintiffs,

vs.

THE STATE OF NEVADA, DEPARTMENT
OF TAXATION,

Defendant.

CASE NO.:
DEPT. NO.:

A-19-786962-B

Department 11

COMPLAINT

1 Plaintiffs, SERENITY WELLNESS CENTER, LLC, a Nevada limited liability company,
2 TGIG, LLC, a Nevada limited liability company, NULEAF INCLINE DISPENSARY, LLC, a
3 Nevada limited liability company, NEVADA HOLISTIC MEDICINE, LLC, a Nevada limited
4 liability company, TRYKE COMPANIES SO NV, LLC a Nevada limited liability company,
5 TRYKE COMPANIES RENO, LLC, a Nevada limited liability company, PARADISE
6 WELLNESS CENTER, LLC, a Nevada limited liability company, GBS NEVADA PARTNERS,
7 LLC, a Nevada limited liability company, FIDELIS HOLDINGS, LLC, a Nevada limited
8 liability company, GRAVITAS NEVADA, LLC, a Nevada limited liability company, NEVADA
9 PURE, LLC, a Nevada limited liability company, MEDIFARM, LLC, a Nevada limited liability
10 company; DOE PLAINTIFFS I through X; and ROE ENTITIES I through X, by and through
11 their counsel, DOMINIC P. GENTILE, ESQ. and VINCENT SAVARESE III, ESQ., MICHAEL
12 V. CRISTALLI, ESQ., and ROSS MILLER, ESQ., of the law firm of Gentile Cristalli Miller
13 Armeni Savarese, hereby complain and allege against DEFENDANT STATE OF NEVADA,
14 DEPARTMENT OF TAXATION; DOE DEFENDANTS I through X; and ROE ENTITY
15 DEFENDANTS I through X, in their official and personal capacities, as follows:
16
17

18 **I.**

19 **PARTIES, JURISDICTION, AND VENUE**

- 20 1. Plaintiff SERENITY WELLNESS CENTER, LLC, was and is a Nevada limited
21 liability company and does business in Clark County, Nevada.
22 2. Plaintiff TGIG, LLC, was and is a Nevada limited liability company and does
23 business in Clark County, Nevada.
24 3. Plaintiff NULEAF INCLINE DISPENSARY, LLC, was and is a Nevada limited
25 liability company and does business in Clark County, Nevada.
26 4. Plaintiff NEVADA HOLISTIC MEDICINE, LLC, was and is a Nevada limited
27 liability company and does business in Clark County, Nevada.
28 5. Plaintiff TRYKE COMPANIES SO NV, LLC was and is a Nevada limited

1 liability company and does business in Clark County, Nevada.

2 6. Plaintiff TRYKE COMPANIES RENO, LLC, was and is a Nevada limited
3 liability company and does business in Clark County, Nevada.

4 7. Plaintiff PARADISE WELLNESS CENTER, LLC, was and is a Nevada limited
5 liability company and does business in Clark County, Nevada.

6 8. Plaintiff GBS NEVADA PARTNERS, LLC, was and is a Nevada limited liability
7 company and does business in Clark County, Nevada.

8 9. Plaintiff FIDELIS HOLDINGS, LLC, was and is a Nevada limited liability
9 company and does business in Clark County, Nevada.

10 10. Plaintiff GRAVITAS NEVADA, LLC, was and is a Nevada limited liability
11 company and does business in Clark County, Nevada.

12 11. Plaintiff NEVADPURE, LLC, was and is a Nevada limited liability company and
13 does business in Clark County, Nevada.

14 12. Plaintiff MEDIFARM, LLC was and is a Nevada limited liability company and
15 does business in Clark County, Nevada.

16 13. Defendant STATE OF NEVADA, DEPARTMENT OF TAXATION (the
17 “Department”) is an agency of the State of Nevada. The Department is responsible for licensing
18 and regulating retail marijuana businesses in Nevada through its Marijuana Enforcement
19 Division.

20 14. The true names and capacities, whether individual, corporate, association or
21 otherwise of Doe Plaintiffs I through X, Roe Entity Plaintiffs I through X; Doe Defendants I
22 through X; and Roe Entity Defendants I through X, inclusive, are unknown to Plaintiffs at
23 this time, who therefore sue said Defendants by such fictitious names. Plaintiffs are informed
24 and believe, and thereupon allege, that each of the Defendants designated herein as Doe
25 and/or Roe Entities is responsible in some manner for the events and occurrences herein
26 referred to, and in some manner caused the injuries and damages to Plaintiffs alleged herein.
27 And Plaintiffs will ask leave of the Court to amend this Complaint to insert the true names
28 and capacities of all Doe and/or Roe Entity Plaintiffs and Defendants when the same have

1 been ascertained by Plaintiffs, together with the appropriate charging allegations, and to join
2 such parties in this action.

3 15. Both jurisdiction and venue with respect to this action properly lie in this Court
4 pursuant to Nev. Rev. Stat. § 13.040.

5 **II.**

6 **GENERAL ALLEGATIONS**

7 16. The Nevada State Legislature passed a number of bills during the 2017
8 legislative session that affected the licensing, regulation, and operation of recreational marijuana
9 establishments in the state of Nevada. One of those bills, Assembly Bill 422, transferred
10 responsibility for the registration, licensing, and regulation of marijuana establishments from the
11 State of Nevada's Division of Public and Behavioral Health to the Department of Taxation.

12 17. This legislation was added to the the voters' approval at the 2016 General
13 Election of 2016 initiative petition, Ballot Question No. 2; is known as the "Regulation and
14 Taxation of Marijuana Act"; and is codified at NRS 453D.010, *et seq.* Nevada Revised Statutes
15 ("NRS") pursuant to

16 18. NRS 453D.020 (Findings and declarations) provides:

17 "1. In the interest of public health and public safety, and in
18 order to better focus state and local law enforcement resources on
19 crimes involving violence and personal property, the People of the
20 State of Nevada find and declare that the use of marijuana should
be legal for persons 21 years of age or older, and its cultivation and
sale should be regulated similar to other legal businesses.

21 2. The People of the State of Nevada find and declare that the
22 cultivation and sale of marijuana should be taken from the domain
23 of criminals and be regulated under a controlled system, where
businesses will be taxed and the revenue will be dedicated to
public education and the enforcement of the regulations of this
chapter.

24 3. The People of the State of Nevada proclaim that marijuana
should be regulated in a manner similar to alcohol so that:

25 (a) Marijuana may only be purchased from a business that is
licensed by the State of Nevada;

26 (b) Business owners are subject to a review by the State of
27 Nevada to confirm that the business owners and the business
location are suitable to produce or sell marijuana;
28

1 (c) Cultivating, manufacturing, testing, transporting and
2 selling marijuana will be strictly controlled through state licensing
and regulation;

3 (d) Selling or giving marijuana to persons under 21 years of
age shall remain illegal;

4 (e) Individuals will have to be 21 years of age or older to
purchase marijuana;

5 (f) Driving under the influence of marijuana will remain
illegal; and

6 (g) Marijuana sold in the State will be tested and labeled.”

7 19. NRS 453D.200 (Duties of Department relating to regulation and licensing of
8 marijuana establishments; information about consumers) provides:

9 “1. Not later than January 1, 2018, the Department shall adopt all
10 regulations necessary or convenient to carry out the provisions of
11 this chapter. The regulations must not prohibit the operation of
12 marijuana establishments, either expressly or through regulations
that make their operation unreasonably impracticable. The
regulations ***shall*** include:

13 (a) Procedures for the issuance, renewal, suspension, and
revocation of a license to operate a marijuana establishment;

14 (b) ***Qualifications for licensure that are directly and***
15 ***demonstrably related to the operation of a marijuana***
establishment;

16

17 2. The Department ***shall*** approve or deny applications for
licenses ***pursuant to NRS 453D.210***” (emphasis added).

18 20. NRS 453D.210 (Acceptance of applications for licensing; priority in licensing;
19 conditions for approval of application; limitations on issuance of licenses to retail marijuana
20 stores; competing applications), in turn, provides, in pertinent part:

21 “4. Upon receipt of a complete marijuana establishment license
22 application, the Department ***shall, within 90 days:***

23 (a) ***Issue the appropriate license if the license application is***
approved.

24 5. The Department ***shall approve a license application if:***

25 (a) The prospective marijuana establishment has submitted an
26 application in compliance with regulations adopted by the
Department and the application fee required pursuant to NRS
453D.2;

27 6. When competing applications are submitted for a proposed
28 retail marijuana store within a single county, the Department ***shall***
use an ***impartial and numerically scored competitive bidding***
process to determine which application or applications among
those competing will be approved” (emphasis added).

1 21. According to an August 16, 2018 letter from the Department, pursuant to
2
3 Section 80(3) of Adopted Regulation of the Department of Taxation, LCB File No. R092-17
4 ("R092-17"), the Department was responsible for allocating the licenses of recreational
5 marijuana retail stores "to jurisdictions within each county and to the unincorporated area of
6 the county proportionally based on the population of each jurisdiction and of the
7 unincorporated area of the county."

8 22. The Department issued a notice for an application period wherein the
9 Department sought applications from qualified applicants to award sixty-four (64) recreational
10 marijuana retail store licenses throughout various jurisdictions in Nevada.

11 23. The application period for those licenses, including thirty-one (31) licenses in
12 Clark County, seven (7) licenses in Washoe County and one (1) license in Nye County, opened
13 on September 7, 2018 and closed on September 20, 2018.

14 24. Pursuant to Section 6.2 of the Recreational Marijuana Establishment License
15 Application ("the Application") issued by the Department, as enabled under the above-quoted
16 provisions of NRS 453D.210, if the Department received more than one application for a license
17 for a recreational marijuana retail store and the Department determined that more than one of the
18 applications was complete and in compliance with R092-17, Sec. 78 and NRS 453D, the Department
19 was required to rank the applications within each applicable locality for any applicants in a
20 jurisdiction that limits the number of retail marijuana stores in order from first to last, with ranking
21 being based on compliance with the provisions of R092-17 Sec. 80, NRS 453D and on the content of
22 the applications relating to the following specifically-enumerated and objective published criteria:

- 23 a. Operating experience of another kind of business by the owners, officers or board
24 members that has given them experience which is applicable to the operation of a
25 marijuana establishment.
26 b. Diversity of the owners, officers or board members.
27 c. Evidence of the amount of taxes paid and other beneficial financial contributions.
28 d. Educational achievements of the owners, officers or board members.

- 1 e. The applicant’s plan for care, quality and safekeeping of marijuana from seed to
2 sale.
3 f. The financial plan and resources of the applicant, both liquid and illiquid.
4 g. The experience of key personnel that the applicant intends to employ.
5 h. Direct experience of the owners, officers, or board members of a medical
6 marijuana establishment or marijuana establishment in this State.

7 25. However, no numerical scoring values are assigned to any of the foregoing
8 criteria enumerated in the Application.

9 26. Moreover, Section 6.3 of the Application further provides that “[a]pplications
10 that have not demonstrated a sufficient response related to the criteria set forth above will not
11 have *additional [unspecified, unpublished] criteria* considered in determining whether to issue a
12 license *and will not move forward in the application process*” (emphasis added).

13 27. Thus, by necessary implication, conversely, Section 6.3 of the Application
14 textually subjects an Application which *has* in fact demonstrated a “sufficient” response related
15 to the specific, published criteria set forth above to “*additional [unspecified, unpublished]*
16 *criteria*,” consideration of which by the Department will determine whether or not a license is
17 issued and whether or not a license Application will “*move forward in the application process*,
18 notwithstanding the textual requirement of NRS 453 D. 200.1(b) that the Department shall adopt
19 only regulations that prescribe “[q]ualifications for licensure that are directly and *demonstrably*
20 related to the operation of a marijuana establishment” (emphasis added).

21 28. No later than December 5, 2018, the Department was responsible for issuing
22 conditional licenses to those applicants who score and rank high enough in each jurisdiction to be
23 awarded one of the allocated licenses in accordance with the impartial competitive bidding process
24 mandated by NRS 453D.210.

25 29. The Department allocated ten (10) licenses for unincorporated Clark County,
26 Nevada; ten (10) licenses for Las Vegas, Nevada; six (6) licenses for Henderson, Nevada; five (5)
27 licenses for North Las Vegas, Nevada; six (6) licenses for Reno, Nevada; one (1) license for Sparks,
28 Nevada; and one (1) license for Nye County, Nevada.

30. Plaintiffs submitted Applications for licenses to own and operate recreational marijuana retail stores in compliance with the specified, published requirements of Department regulations together with the required application fee in accordance with NRS 453D.210.

31. Plaintiffs have been informed by the Department that all of their Applications to operate recreational marijuana retail stores were denied.

32. In each instance, Plaintiffs were informed by letter from the Department stating that a license was not granted to the applicant “because it did not achieve a score high enough to receive an available license.”

33. On information and belief, Plaintiffs allege that the Department's denial of their license applications was not properly based upon actual implementation of the impartial and objective competitive bidding process mandated by NRS 453D.210, but rather, was in fact based upon the arbitrary and capricious exercise of administrative partiality and favoritism.

34. On information and belief, Plaintiffs allege conversely that that the Department improperly granted licenses to other competing applicants, likewise without actual implementation of the impartial and objective competitive bidding process mandated by NRS 453D.210, but rather, based upon the arbitrary and capricious exercise of administrative partiality and favoritism.

35. On information and belief, Plaintiffs allege that the Department has improperly granted more than one recreational marijuana store license per jurisdiction to certain applicants, owners, or ownership groups.

III.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF
(Violation of Civil Rights)

(Due Process: Deprivation of Property)

(U.S. Const., Amendment XIV; Nev. Const., Art. 1, Sec. 1, 8; Title 42 U.S.C. § 1983)

36. Plaintiffs repeat and re-allege all prior paragraphs as though fully set forth herein.

1 37. The provisions of NRS 453D.200.2 and NRS 453D.210.4-6, affirmatively
2 mandating that the Department “shall” approve and issue the appropriate license within a time
3 certain if the prospective establishment submits an Application in compliance with published
4 Department regulations promulgated in accordance with the limitations imposed by NRS 453.
5 D.200.1(b) together with the required application fee; and, in the case of competing
6 Applications, outranks competing applicants in accordance with an objective, impartial and
7 numerically scored competitive bidding process, serve to create, as a matter of legislative intent,
8 a *statutory entitlement* to receipt of the license by applicants who comply with and prevail
9 competitively in accordance with those objective and impartial standards and procedures.

10 38. Such a statutory entitlement constitutes a “property interest” within the meaning
11 and subject to the due process protections of the Fourteenth Amendment to the Constitution of
12 the United States and Article 1, Sections 1 and 8 of the Constitution of the State of Nevada; and
13 therefore, by definition, may not be denied arbitrarily, capriciously, corruptly or based upon
14 administrative partiality or favoritism.

15 39. However, acting under color of state law, the Department has effectively nullified
16 and rendered illusory the legislative statutory entitlement to licensure of applicants who comply
17 with and prevail competitively in accordance with the objective and impartial standards and
18 procedures prescribed by the provisions of NRS 453D.200.2 and NRS 453D.210.4-6, by
19 textually subjecting an Application which in fact provides “sufficient” responses related to the
20 published, enumerated and specific criteria set forth in the Application to approval pursuant to
21 further, unpublished, unspecified and unascertainable “additional criteria” which are not set forth
22 therein, as a silent supplemental condition of licensure, thereby rendering the administrative
23 regulation governing the Application and licensing process susceptible to *ad hoc*, non-
24 transparent, arbitrary, capricious or corrupt decision-making based upon administrative partiality
25 or favoritism which cannot be discounted; thereby rendering that regulatory scheme
26 unconstitutional on its face.

27 40. On information and belief, Plaintiffs further allege that pursuant to the
28 implementation of the foregoing constitutionally-repugnant licensing process, the denial of their

1 Applications for licensure, were in fact affected by actual arbitrary, capricious or corrupt
2 decision-making based upon administrative partiality or favoritism; and therefore, that that
3 licensing process has thereby been rendered unconstitutional in its application as well as to
4 Plaintiffs.

5 41. Plaintiffs have therefore been deprived of property without due process under
6 color of state law in violation of the Fourteenth Amendment to the Constitution of the United
7 States and Article 1, Sections 1 and 8 of the Constitution of the State of Nevada.

8 42. The Constitutional infirmity of the entire licensing process renders the denial of
9 Plaintiffs' Applications for licensure void and unenforceable, and Plaintiffs are entitled to a
10 declaration as to the ineffectiveness thereof and an order enjoining the enforcement of those
11 license denials.

12 43. Plaintiffs are entitled to declaratory relief with respect to the forgoing federal
13 constitutional infirmities of the administrative licensing scheme pursuant to the provisions of
14 Title 42, United States Code ("U.S.C."), Section 1983 and otherwise.

15 44. Plaintiffs are entitled to declaratory relief because a justiciable controversy exists
16 that warrants a declaratory judgment pursuant to Nevada's Uniform Declaratory Judgments Act,
17 codified at NRS 30.010 to 30.160, inclusive.

18 45. Plaintiffs and Defendant have adverse and/or competing interests in that the
19 Department, through its Marijuana Enforcement Division, has denied Plaintiffs' Applications in
20 in violation of Plaintiff's constitutional rights, Nevada law, and state policy.

21 46. The Department's refusal to issue licenses to Plaintiffs affects Plaintiffs' rights
22 under NRS 453D, NAC 453D, R092-17, and other Nevada laws and regulations.

23 47. Further, the Department's improper ranking of other applicants for licensure and
24 subsequent, improper issuance of licenses to such other applicants adversely affects the rights of
25 Plaintiff under NRS 453D, NAC 453D, R09217, and other Nevada laws and regulations.

26 48. The Department's actions and/or inactions also have created an actual justiciable
27 controversy ripe for judicial determination between Plaintiffs and the Department with respect to
28 the construction, interpretation, and implementation of NRS 453D, NAC 453D, and R092-17,

1 and Plaintiffs have been harmed, and will continue to be harmed, by the Defendants' actions
2 and/or inactions.

3 49. The Department's actions and/or inactions have further failed to appropriately
4 address the necessary considerations and legislative intent of NRS 453D.210, designed to restrict
5 monopolies.

6 50. Accordingly, Plaintiff seeks a declaration from this Court that, *inter alia*:

- 7 a. The Department improperly denied Plaintiffs' license Applications for the
8 operation of a recreational marijuana establishment.
- 9 b. The denial of such licenses to Plaintiffs was void *ab initio*;
- 10 c. The procedures employed in denying Plaintiffs' license Applications violated
11 Plaintiffs' procedural and substantive due process rights and entitlement to
12 equal protection of the law (as set forth *infra*) under the Nevada and United
13 States Constitutions and, therefore, those license denials are void and
14 unenforceable;
- 15 d. The denials are void for vagueness and therefore unenforceable;
- 16 e. Defendant acted arbitrarily and capriciously or in contravention of a legal duty
17 and Plaintiffs are therefore entitled to a writ of mandamus;
- 18 f. Plaintiffs are entitled to judicial review; and
- 19 g. The Department's denial of Plaintiffs' license Applications lacked substantial
20 evidence.

21 51. Plaintiffs also seek a declaration from this Court that the Department must issue
22 licenses to Plaintiffs for the operation of a recreational marijuana establishment as applied for in
23 that Plaintiffs' would have been entitled to receive said licenses had the Department properly
24 applied the provisions of NRS 453D, NAC Chapter 453D, and R092-17.

25 52. Plaintiffs contend that a declaratory judgment is both necessary and proper at
26 this time for the Court to determine the respective rights, duties, responsibilities and liabilities
27 of Plaintiffs under NRS 453D, NAC Chapter 453D, R092-17, and other Nevada laws and
28 regulations.

53. Plaintiffs are also entitled to injunctive relief from the foregoing federal constitutional violations pursuant to the provisions of 42 U.S.C. Section 1983 and otherwise.

54. The Department's flawed interpretation of the provisions of NRS 453D, NAC Chapter 453D, and R092-17, and refusal to issue "conditional" licenses in accordance with the law constitute and cause continuing and irreparable harm to Plaintiffs, who have no adequate remedy at law.

55. The purpose of this administrative refusal was and is to unreasonably interfere with Plaintiffs' business and cause Plaintiffs to suffer irreparable harm.

56. The Department will suffer no harm by following the law with respect to issuing the licenses in question.

57. The Department's interpretation of NRS 453D, NAC Chapter 453D, and R092-17 is flawed and Plaintiffs are likely to succeed on the merits in this litigation.

58. The public interest favors Plaintiffs because in the absence of injunctive relief, the consumers who would have benefitted by Plaintiffs' licensure will have less available options from which they can receive recreational marijuana in accordance with legislative intent.

59. Therefore, Plaintiffs are entitled to preliminary injunctive relief, and after a trial on the merits, permanent injunctive relief, ordering the Department to issue the subject licenses to Plaintiffs in accordance with NRS 453D, NAC 453D, and R092-17.

60. Plaintiffs are also entitled to damages attributable to the above-identified due process violations pursuant to the provisions of 42 U.S.C. Section 1983 and otherwise.

61. As the actions of the Department have necessitated that Plaintiffs retain the legal services of Gentile Cristalli Miller Armeni Savarese, and incur fees and costs to bring this action, Plaintiffs are also entitled to an award of attorneys' fees and costs of suit.

SECOND CLAIM FOR RELIEF **(Violation of Civil Rights)**

(Due Process: Deprivation of Liberty)

(U.S. Const., Amendment XIV; Nev. Const., Art. 1, Sec. 1, 8; Title 42 U.S.C. § 1983)

62. Plaintiffs repeat and re-allege all prior paragraphs as though fully set forth herein.

1 63. The fundamental constitutional right to pursue a lawful occupation constitutes a
2 “liberty interest” within the meaning and subject to the due process protections of the Fourteenth
3 Amendment to the Constitution of the United States and Article 1, Sections 1 and 8 of the
4 Constitution of the State of Nevada; and therefore, by definition, may not be denied arbitrarily,
5 capriciously, corruptly or based upon administrative partiality or favoritism.

6 64. However, acting under color of state law, the Department has effectively nullified
7 and rendered illusory the legislative statutory entitlement to licensure of applicants who comply
8 with and prevail competitively in accordance with the objective and impartial standards and
9 procedures prescribed by the provisions of NRS 453D.200.2 and NRS 453D.210.4-6, by
10 textually subjecting an Application which in fact provides “sufficient” responses related to the
11 published, enumerated and specific criteria set forth in the Application to approval pursuant to
12 further, unpublished, unspecified and unascertainable “additional criteria” which are not set forth
13 therein, as a silent supplemental condition of licensure, in violation of NRS 200.D.1(b) thereby
14 rendering the administrative regulation governing the Application and licensing process
15 susceptible to *ad hoc*, non-transparent, arbitrary, capricious or corrupt decision-making based
16 upon administrative partiality or favoritism which cannot be discounted; thereby rendering that
17 regulatory scheme unconstitutional on its face.

18 65. On information and belief, Plaintiffs further allege that the pursuant to the
19 implementation of the foregoing constitutionally-repugnant licensing process, the denial of their
20 Applications for licensure, were in fact affected by actual arbitrary, capricious or corrupt
21 decision-making based upon administrative partiality or favoritism; and therefore, that that
22 licensing process has thereby been rendered unconstitutional in its application as well.

23 66. Plaintiffs have therefore likewise been deprived of liberty without due process
24 under color of state law in violation of the Fourteenth Amendment to the Constitution of the
25 United States and Article 1, Sections 1 and 8 of the Constitution of the State of Nevada.

26 67. The Constitutional infirmity of the entire licensing process renders the denial of
27 Plaintiffs’ Applications for licensure void and unenforceable, and, for the reasons set forth supra
28 in Plaintiffs’ FIRST CAUSE OF ACTION at paragraphs 30 through 47, inclusive, Plaintiffs are

1 entitled to a declaration as to the ineffectiveness thereof and an order enjoining the enforcement
2 of those license denials.

3 68. Plaintiffs are also entitled to damages for these due process violations pursuant
4 to the provisions of 42 U.S.C. Section 1983 and otherwise.

5 69. As the actions of the Department have necessitated that Plaintiffs retain the legal
6 services of Gentile Cristalli Miller Armeni Savarese, and incur fees and costs to bring this action,
7 Plaintiffs are also entitled to an award of attorneys' fees and costs of suit.

8 **THIRD CLAIM FOR RELIEF**

9 **(Violation of Civil Rights)**

10 **(Equal Protection)**

11 **(U.S. Const., Amendment XIV; Nev. Const., Art. 1, Sec. 1; Title 42 U.S.C. § 1983)**

12 70. Plaintiffs repeat and re-allege all prior paragraphs as though fully set forth herein.

13 71. By improperly denying Plaintiffs' Applications for licensure under the provisions
14 of NRS 453D.200.2 and NRS 453D.210.4-6 while improperly granting the Applications of other
15 applicants under color of state law as set forth *supra* in Plaintiffs' FIRST CAUSE OF ACTION
16 and SECOND CAUSE OF ACTION, the Department has, without justification, disparately
17 treated Plaintiffs' Applications absent rational basis, and has thereby violated Plaintiffs' rights to
18 equal protection of the law as guaranteed by the Fourteenth Amendment to the Constitution of
19 the United States and Article 1, Section 1 of the Constitution of the State of Nevada.

20 72. The constitutional infirmity of the entire licensing process and the resulting denial
21 of equal protection renders the denial of Plaintiffs' Applications for licensure void and
22 unenforceable, and, for the reasons set forth *supra* in Plaintiffs' FIRST CAUSE OF ACTION at
23 paragraphs 30 through 47, inclusive, Plaintiffs are entitled to a declaration as to the
24 ineffectiveness thereof and an order enjoining the enforcement of those license denials.

25 73. Plaintiffs are also entitled to damages for these equal protection violations
26 pursuant to the provisions of 42 U.S.C. Section 1983 and otherwise.

27 74. As the actions of the Department have necessitated that Plaintiffs retain the legal
28 services of Gentile Cristalli Miller Armeni Savarese, and incur fees and costs to bring this action,

1 Plaintiffs are also entitled to an award of attorneys' fees and costs of suit.

2 **FOURTH CLAIM FOR RELIEF**

3 **(Petition for Judicial Review)**

4 75. Plaintiffs repeat and re-allege all prior paragraphs as though fully set forth
5 herein.

6 76. The Department, in misinterpreting and incorrectly applying the provisions of
7 NRS 453D, NAC 453D and the related Nevada laws and regulations, has exceeded its
8 jurisdiction by improperly issuing licenses to applicants that do not merit licenses under the
9 provisions of NRS 453D, NAC 453D, and R092-17.

10 77. Plaintiffs are aggrieved by the decision of the Department to deny Plaintiffs'
11 Applications without proper notice, substantial evidence, or compliance with NRS 453D, NAC
12 453D, R092-17, and other Nevada state laws or regulations.

13 78. There is no provision in NRS 453D, NAC 453D, or R092-17 allowing for an
14 administrative appeal of the Department's decision, and apart from injunctive relief, no plain,
15 speedy, and adequate remedy for the Department's improper actions.

16 79. Accordingly, Plaintiff petitions this Court for judicial review of the record on which
17 the Department's denials were based, and an order providing *inter alia*:

- 18 a. A determination that the decision lacked substantial evidence;
19 b. A determination that the denials are void *ab initio* for non-compliance with
20 NRS 453D, NAC 453D, R092-17, and other Nevada laws or regulations; and
21 c. Such other relief as is consistent with those determinations.

22 80. As the actions of the Department have necessitated that Plaintiffs retain the legal
23 services of Gentile Cristalli Miller Armeni Savarese, and incur fees and costs to bring this action,
24 Plaintiffs are also entitled to an award of attorneys' fees and costs of suit.

25 **FIFTH CLAIM FOR RELIEF**

26 **(Petition for Writ of Mandamus)**

27 81. Plaintiffs repeat and re-allege all prior paragraphs as though fully set forth herein.

28 82. When a governmental body fails to perform an act "that the law requires" or acts

1 in an arbitrary or capricious manner, a writ of mandamus shall issue to correct the action. Nev.
2 Rev. Stat. § 34.160.

3 83. The Department has failed to perform various acts that the law requires including
4 but not limited to:

- 5 a. Providing proper pre-hearing notice of the denial; and
- 6 b. Arbitrarily and capriciously denying the applications for no legitimate reason.

7 84. The Department acted arbitrarily and capriciously in the denial by performing
8 and/or failing to perform the acts set forth *supra*, and because, *inter alia*:

- 9 a. The Board lacked substantial evidence to deny Plaintiffs' Applications; and
- 10 b. The Board denied Plaintiffs' Applications in order to approve the Applications
11 of other competing applicants without regard to the merit of Plaintiffs'
12 Applications and the lack of merit of the Applications of other competing
13 applicants.

14 85. These violations of the Defendants' legal duties were arbitrary and capricious
15 actions that compel this Court to issue a Writ of Mandamus directing the Department to review
16 Plaintiffs' Applications on their merits and/or approve them.

17 86. As a result of the Defendants' unlawful and arbitrary and capricious actions,
18 Plaintiff has been forced to retain legal counsel to prosecute this action and is therefore also
19 entitled to its damages, costs in this suit, and an award of attorneys' fees pursuant to NRS
20 34.270.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, PLAINTIFFS pray for relief as follows:

- 23 1. For declaratory relief as set forth above;
- 24 2. For a preliminary and permanent injunction enjoining the enforcement of the
25 denial of their Applications for licensure;
- 26 3. For judicial review of the record and history on which the denial of those
27 Applications was based;
- 28 4. For the issuance of a writ of mandamus;

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- 5. For compensatory and special damages as set forth herein;
- 6. For attorneys’ fees and costs of suit; and
- 7. For all other and further relief as the Court deems just and proper.

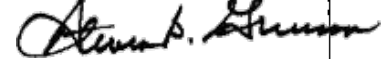
DEMAND FOR JURY TRIAL

Trial by jury is hereby demanded on all claims and issues so triable.

DATED this 4th day of January, 2019.

GENTILE CRISTALLI
MILLER ARMENI SAVARESE

/s/ Vincent Savarese, III, Esq.
DOMINIC P. GENTILE
Nevada Bar No. 1923
MICHAEL V. CRISTALLI
Nevada Bar No. 6266 ____
ROSS MILLER
Nevada Bar No. 8190
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Nevada Bar No. 2467
410 S. Rampart Blvd., Suite 420
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Tel: (702) 880-0000
Attorneys for Plaintiffs



1 **COMP**
2 THEODORE PARKER, III, ESQ.
3 Nevada Bar No. 4716
4 **PARKER, NELSON & ASSOCIATES, CHTD.**
5 2460 Professional Court, Suite 200
6 Las Vegas, Nevada 89128
7 Telephone: (702) 868-8000
8 Facsimile: (702) 868-8001
9 Email: tparker@pnalaw.net

10 *Attorneys for Plaintiff*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 NEVADA WELLNESS CENTER, LLC, a
14 Nevada Limited Liability Company,

15 Plaintiff,

16 v.

17 STATE OF NEVADA, DEPARTMENT OF
18 TAXATION; and DOES I through X,
19 inclusive; and ROE CORPORATIONS I
20 through X, inclusive,

21 Defendants.

CASE NO.:
DEPT. NO.:

A-19-787540-W

Department 18

**COMPLAINT AND PETITION FOR
JUDICIAL REVIEW OR WRIT OF
MANDAMUS**

Arbitration Exemption Claimed:

- *Involves Declaratory Relief*
- *Presents Significant Issue of Public Policy*
- *Involves Equitable or Extraordinary Relief*

22 COMES NOW, Plaintiff, NEVADA WELLNESS CENTER, LLC (hereinafter "Plaintiff"),
23 by and through its attorney of record, THEODORE PARKER, III, ESQ. of the law firm of PARKER,
24 NELSON & ASSOCIATES, CHTD., and hereby complains against Defendants, STATE OF
25 NEVADA, DEPARTMENT OF TAXATION; and DOES I through X and ROE CORPORATIONS
26 I through X, and petitions this Court for Writ of Mandamus as follows:

27 **I.**

28 **PARTIES & JURISDICTION**

1. Plaintiff, NEVADA WELLNESS CENTER, LLC, is a Nevada Limited Liability
Company duly licensed under the laws of the State of Nevada.

2. Defendant STATE OF NEVADA, DEPARTMENT OF TAXATION (the
"Department") is an agency of the State of Nevada. The Department is responsible for licensing and
regulating retail marijuana businesses in Nevada through its Marijuana Enforcement Division.

3. The true names and capacities, whether individual, corporate, association or otherwise of the Defendants DOES I through X and/or ROE CORPORATIONS I through X, inclusive, are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiff is informed and believes, and thereupon alleges, that each of the Defendants designated herein as DOES and/or ROE CORPORATIONS is responsible in some manner for the events and happenings herein referred to, and in some manner caused the injuries and damages to Plaintiff alleged herein. Plaintiff will ask leave of the Court to amend this Complaint to insert the true names and capacities of said Defendants DOES I through X and/or ROE CORPORATIONS I through X, inclusive when the same have been ascertained by Plaintiff, together with the appropriate charging allegations, and to join such Defendants in this action.

II.

GENERAL ALLEGATIONS

4. The Nevada State Legislature passed a number of bills during the 2017 legislative session that affected the licensing, regulation, and operation of recreational marijuana establishments in the state of Nevada. One of those bills, Assembly Bill 422, transferred responsibility for the registration, licensing, and regulation of marijuana establishments from the State of Nevada's Division of Public and Behavioral Health to the Department of Taxation.

5. According to an August 16, 2018 letter from the Department, pursuant to Section 80(3) of Adopted Regulation of the Department of Taxation, LCB File No. R092-17 ("R092-17"), the Department was responsible for allocating the licenses of recreational marijuana retail stores "to jurisdictions within each county and to the unincorporated area of the county proportionally based on the population of each jurisdiction and of the unincorporated area of the county."

6. The Department issued a notice for an application period wherein the Department sought applications from qualified applicants to award sixty-four (64) recreational marijuana retail store licenses throughout various jurisdictions in Nevada.

7. The application period for licenses opened on September 7, 2018 and closed on September 20, 2018.

8. If the Department received more than one application for a license for a recreational

1 marijuana retail store and the Department determined that more than one of the applications was
2 complete and in compliance with R092-17, Sec. 78 and NRS 453D, the Department was required
3 to rank the applications within each applicable locality for any applicants in a jurisdiction that limits
4 the number of retail marijuana stores in order from first to last. Ranking is based on compliance with
5 the provisions of R092-17 Sec. 80, NRS 453D and on the content of the applications relating to:

- 6 a. Operating experience of another kind of business by the owners, officers or
7 board members that has given them experience which is applicable to the
8 operation of a marijuana establishment.
- 9 b. Diversity of the owners, officers or board members.
- 10 c. Evidence of the amount of taxes paid and other beneficial financial
11 contributions.
- 12 d. Educational achievements of the owners, officers or board members.
- 13 e. The applicant's plan for care, quality and safekeeping of marijuana from seed
14 to sale.
- 15 f. The financial plan and resources of the applicant, both liquid and illiquid.
- 16 g. The experience of key personnel that the applicant intends to employ.
- 17 h. Direct experience of the owners, officers or board members of a medical
18 marijuana establishment or marijuana establishment in this State.

19 9. No later than December 5, 2018, the Department was responsible for issuing
20 conditional licenses to those applicants who score and rank high enough in each jurisdiction to be
21 awarded one of the allocated licenses.

22 10. The Department allocated ten (10) licenses for unincorporated Clark County, Nevada;
23 ten (10) licenses for Las Vegas, Nevada; six (6) licenses for Henderson, Nevada; five (5) licenses
24 for North Las Vegas, Nevada; six (6) licenses for Reno, Nevada; one (1) license for Sparks, Nevada;
25 and one (1) license for Nye County, Nevada.

26 11. Prior to the application process with the Department, Plaintiff was previously scored
27 and ranked in the 2015 licensing procedure, pursuant to NRS 453A, in conjunction with a medical
28 marijuana establishment permit application.

1 12. At that time, Plaintiff received a score of 198.62 and was ranked as the highest
2 applicant for a medical marijuana dispensary in Las Vegas, Nevada and received a score of 193.62
3 and was ranked seventh highest applicant for a medical marijuana dispensary in the City of
4 Henderson, Nevada.

5 13. The factors used for the 2015 rankings were substantially similar to the factors to be
6 used by the Department for the 2018 rankings for the allocated licenses.

7 14. The only major difference between the factors assessed for the 2015 rankings and the
8 2018 rankings was the addition of diversity of race, ethnicity, or gender of applicants (owners,
9 officers, board members) to the existing merit criteria.

10 15. Plaintiff submitted applications for recreational marijuana retail store licenses to own
11 and operate recreational marijuana retail stores in the following jurisdictions: unincorporated Clark
12 County, Nevada; Las Vegas, Nevada; North Las Vegas, Nevada; and Reno, Nevada.

13 16. On or about December 5, 2018, despite its prior exceptional rankings, Plaintiff was
14 informed by the Department that all of its applications to operate recreational marijuana retail stores
15 were denied.

16 17. Plaintiff is informed and believes that the Department improperly granted
17 "conditional" licenses to applicants that were ranked substantially lower than Plaintiff on the 2015
18 rankings.

19 18. Plaintiff is informed and believes that the Department improperly granted more than
20 one recreational marijuana store license per jurisdiction to certain applicants, owners, or ownership
21 groups.

22 19. Plaintiff timely filed an Appeal and Petition for Reconsideration with the State of
23 Nevada Department of Taxation on January 4, 2019.

24 20. Plaintiff is scheduled to meet with the Department of Taxation on January 17, 2019.

25 21. On January 10, 2019 the State of Nevada Department of Taxation notified Plaintiff
26 that there is no allowance for an appeal and that it would take no further action based on Plaintiff's
27 Notice of Appeal. See Exhibit 1.

28 22. Plaintiff not being satisfied with the results of its Appeal and Petition for

1 Reconsideration, has exhausted its administrative remedies.

2 23. Plaintiff therefore files the present Complaint in order to pursue its legal rights and
3 remedies.

4 **III.**

5 **CLAIMS FOR RELIEF**

6 **FIRST CLAIM FOR RELIEF**

7 **(Declaratory Relief)**

8 24. Plaintiff repeats and realleges all prior paragraphs as though fully set forth herein.

9 25. A justiciable controversy exists that warrants a declaratory judgment pursuant to
10 Nevada's Uniform Declaratory Judgments Act, NRS 30.010 to 30.160, inclusive.

11 26. Plaintiff and the Defendants have adverse and/or competing interests as the
12 Department, through its Marijuana Enforcement Division, has denied the applications submitted by
13 Plaintiff and has violated Plaintiff's Constitutional Rights, Nevada law, and State policy.

14 27. The Department's refusal to issue Plaintiff a "conditional" license affects Plaintiff's
15 rights afforded it by NRS 453D, NAC 453D, R092-17, and other Nevada laws and regulations.

16 28. Further, the Department's improper ranking of the other applicants for a recreational
17 marijuana establishment license and the Department's subsequent, improper issuance to each of a
18 "conditional" license also affects the rights of Plaintiff afforded it by NRS 453D, NAC 453D,
19 R09217, and other Nevada laws and regulations.

20 29. The Department's actions and/or inactions also have created an actual justiciable
21 controversy ripe for judicial determination between Plaintiff and the Department with respect to the
22 construction, interpretation, and implementation of NRS 453D, NAC 453D, and R092-17 as to
23 Plaintiff. Plaintiff has been harmed, and will continue to be harmed, by the Defendants' actions.

24 30. The Department's actions and/or inactions failed to appropriately address the
25 necessary considerations and intent of NRS 453D.210, designed to restrict monopolies.

26 31. Accordingly, Plaintiff seeks a declaration from this Court that, inter alia:

- 27 a. That the Department improperly denied Plaintiff four (4) "conditional"
28 licenses for the operation of a recreational marijuana establishment in the

1 following jurisdictions: unincorporated Clark County, Nevada; Las Vegas,
2 Nevada; North Las Vegas, Nevada; and Reno, Nevada.

3 b. The denial of a "conditional" license to Plaintiff is void *ab initio*;
4 c. The procedures employed in the denial violated Plaintiff's procedural due
5 process rights and equal protection rights under the Nevada and United States
6 Constitutions and, therefore, the denial is void and unenforceable;
7 d. The denial violates Plaintiff's substantive due process rights and equal
8 protection rights under the Nevada and United States Constitutions and,
9 therefore, the denial is void and unenforceable;
10 e. The denial is void for vagueness and therefore unenforceable;
11 f. Defendant acted arbitrarily and capriciously or in contravention of a legal
12 duty and Plaintiff is therefore entitled to a writ of mandamus;
13 g. Plaintiff is entitled to judicial review; and
14 h. The Department's denial lacked substantial evidence.

15 32. Plaintiff also seeks a declaration from this Court that the Department must issue
16 Plaintiff four (4) "conditional" licenses for the operation of a recreational marijuana establishment
17 in unincorporated Clark County, Nevada; Las Vegas, Nevada; North Las Vegas, Nevada; and Reno,
18 Nevada, since Plaintiff's score issued by the Department would have ranked high enough to entitle
19 it to "conditional" licenses had the Department properly applied the provisions of NRS 453D, NAC
20 Chapter 453D, and R092-17.

21 33. Plaintiff asserts and contends that a declaratory judgment is both necessary and proper
22 at this time for the Court to determine the respective rights, duties, responsibilities and liabilities of
23 the Plaintiff afforded it by NRS 453D, NAC Chapter 453D, R092-17, and other Nevada laws and
24 regulations.

25 34. Plaintiff has found it necessary to retain the legal services of Parker, Nelson &
26 Associates, Chtd. to bring this action, and Plaintiff is entitled to recover its reasonable attorneys' fees
27 and costs therefor.

28 ///

1 fundamentally unfair and violated the due process requirements of the Nevada and United States
2 Constitutions.

3 46. The Constitutional infirmity of this entire process renders the denial void and
4 unenforceable, and Plaintiff is entitled to a declaration as to the denials' ineffectiveness and an order
5 enjoining its enforcement.

6 47. Plaintiff is also entitled to damages for these due process violations.

7 48. As the action of the Department necessitated that Plaintiff retain the legal services
8 of Parker, Nelson & Associates, Chtd., and incur fees and costs to bring this action, Plaintiff is also
9 entitled to attorneys' fees and costs of suit.

10 49. Plaintiff has found it necessary to bring this action, and Plaintiff is entitled to recover
11 its reasonable attorneys' fees and costs therefor.

12 **FOURTH CLAIM FOR RELIEF**

13 **(Violation of Substantive Due Process)**

14 50. Plaintiff repeats and realleges all prior paragraphs as though fully set forth herein.

15 51. The denial violates Plaintiff's substantive due process rights guaranteed by the Nevada
16 Constitution and the United States Constitution.

17 52. The Constitutional infirmity of this entire process and the Department's denial renders
18 the denial void and unenforceable, and Plaintiff is entitled to a declaration as to the denials'
19 ineffectiveness and an order enjoining its enforcement.

20 53. Plaintiff is also entitled to damages for these due process violations.

21 54. As the action of the Department necessitated that Plaintiff retain the legal services
22 of Parker, Nelson & Associates, Chtd., and incur fees and costs to bring this action, Plaintiff is also
23 entitled to attorneys' fees and costs of suit.

24 **FIFTH CLAIM FOR RELIEF**

25 **(Equal Protection Violation)**

26 55. Plaintiff repeats and realleges all prior paragraphs as though fully set forth herein.

27 56. The denial violates Plaintiff's right to equal protection under the Nevada and United
28 States Constitutions.

1 57. The denial divides up marijuana applications into two or more classes.

2 58. This classification and disparate treatment is unconstitutional because there is no
3 rational relationship between the disparity of this treatment and any legitimate governmental
4 purpose.

5 59. The constitutional infirmity of this denial renders it void and unenforceable, and
6 Plaintiff is entitled to a declaration as to the denials' ineffectiveness and an order enjoining its
7 enforcement.

8 60. As the action of the Department necessitated that Plaintiff retain the legal services
9 of Parker, Nelson & Associates, Chtd., and incur fees and costs to bring this action, Plaintiff is also
10 entitled to attorneys' fees and costs of suit.

11 **SIXTH CLAIM FOR RELIEF**

12 **(Petition for Judicial Review)**

13 61. Plaintiff repeats and realleges all prior paragraphs as though fully set forth herein.

14 62. The Department, in misinterpreting and incorrectly applying NRS 453D, NAC 453D
15 and the related Nevada laws and regulations, has exceeded its jurisdiction by issuing "conditional"
16 licenses to applicants that do not merit "conditional" licenses under NRS 453D, NAC 453D, and
17 R092-17.

18 63. Plaintiff is aggrieved by the decision of the Department to deny Plaintiff's application
19 without proper notice, substantial evidence, or compliance with. NRS 453D, NAC 453D, R092-17,
20 and other Nevada state laws or regulations.

21 64. There is no provision in NRS 453D, NAC 453D, or R092-17 allowing for an
22 administrative appeal of the Department's decision, and apart from injunctive relief, no plain, speedy,
23 and adequate remedy for the Department's improper actions.

24 65. Accordingly, Plaintiff petitions this Court for judicial review of the record on which
25 the Department's denial was based, including but not limited to:

- 26 a. A determination that the decision lacked substantial evidence;
- 27 b. A determination that the denial is void ab initio for non-compliance with
- 28 NRS 453D, NAC 453D, R092-17, and other Nevada state laws or

1 regulations; and

2 c. Other relief consistent with those determinations.

3 66. Plaintiff has found it necessary to retain the legal services of Parker, Nelson &
4 Associates, Chtd. to bring this action, and Plaintiff is entitled to recover its reasonable attorneys' fees
5 and costs therefor.

6 **SEVENTH CLAIM FOR RELIEF**

7 **(Petition for Writ of Mandamus)**

8 67. Plaintiff repeats and realleges all prior paragraphs as though fully set forth herein.

9 68. When a governmental body fails to perform an act "that the law requires" or acts in
10 an arbitrary or capricious manner, a writ of mandamus shall issue to correct the action. Nev. Rev.
11 Stat. § 34.160.

12 69. The Department failed to perform various acts that the law requires including but not
13 limited to:

14 a. Providing proper pre-hearing notice of the denial; and

15 b. Arbitrarily and capriciously denying the application for no legitimate reason.

16 70. The Department acted arbitrarily and capriciously in the denial by performing or
17 failing to perform the acts enumerated above and because, inter alia:

18 a. The Board lacked substantial evidence to deny the application; and

19 b. The Board denied the application solely to approve other competing
20 applicants without regard to the merit of Plaintiff's application.

21 71. These violations of the Defendants' legal duties were arbitrary and capricious actions
22 that compel this Court to issue a Writ of Mandamus directing the Department to review the
23 application on its merits and/or approve it.

24 72. As a result of the Defendants' unlawful and arbitrary and capricious actions, Plaintiff
25 has been forced to retain legal services of Parker, Nelson & Associates, Chtd. to prosecute this
26 action, and is therefore also entitled to its damages, costs in this suit, and an award of attorneys' fees
27 pursuant to NRS 34.270.

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IV.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. For declaratory relief as set forth above;
2. For a preliminary and permanent injunction enjoining the enforcement of the denial;
3. For judicial review of the record and history on which the denial was based;
4. For the issuance of a writ of mandamus;
5. For compensatory and special damages as set forth herein;
6. For attorneys' fees and costs of suit; and
7. For all other and further relief as the Court deems just and proper.


V.

JURY DEMAND

Trial by jury is hereby demanded on all claims and issues so triable.

DATED this 14th day of January, 2019.

PARKER, NELSON & ASSOCIATES, CHTD.



THEODORE PARKER, III, ESQ.
Nevada Bar No. 4716
2460 Professional Court, Suite 200
Las Vegas, Nevada 89128

Attorneys for Plaintiff

EXHIBIT 1

EXHIBIT 1



STEVE SISOLAK
Governor
JAMES DEVOLLD
Chair, Nevada Tax Commission
MELANIE YOUNG
Executive Director

**STATE OF NEVADA
DEPARTMENT OF TAXATION**

Web Site: <https://tax.nv.gov>

1550 College Parkway, Suite 115
Carson City, Nevada 89706-7937
Phone: (775) 684-2000 Fax: (775) 684-2020

LAS VEGAS OFFICE
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555 E. Washington Avenue
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RENO OFFICE
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Building L, Suite 235
Reno, Nevada 89502
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Fax: (775) 688-1303

HENDERSON OFFICE
2550 Paseo Verde Parkway, Suite 180
Henderson, Nevada 89074
Phone: (702) 486-2300
Fax: (702) 486-3377

January 10, 2019

Nevada Wellness Center, LLC
c/o Theodore Parker
2460 Professional Ct. Suite 200
Las Vegas, NV 89128

Re: Notice of Appeal (RD312, RD313, RD314, RD315)
TID 1017582408

Mr. Theodore Parker,

The Department is in receipt of your Notice of Appeal to the Nevada Tax Commission regarding the denial of a license for a retail marijuana store. NRS 233B.127 indicates the statutes dealing with adjudication of contested cases "do not apply to the grant, denial or renewal of a license unless notice and opportunity for hearing are required by law to be provided to the applicant before the grant, denial or renewal of the license."

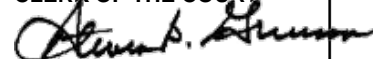
The Department scored timely submitted applications using an impartial and numerically scored competitive process in accordance with NRS 453D.210(6). After scoring the applications, the Department ranked the applications from first to last. Pursuant to Sec. 80 of Permanent Regulation LCB File No. R092-17 filed on February 27, 2018 ("Permanent Regulations"), the Department issued licenses for retail marijuana stores to the highest-ranked applicants until the Department issued the number of licenses authorized for each jurisdiction. The Department issued the licenses or denials within 90 days of the closing of the application period (NRS 453D.210(4) & Sec. 84 of the Permanent Regulations). Unless otherwise indicated in the notice, the basis for the denial of your application was a failure to obtain a high enough ranking to obtain a license in the jurisdiction(s) in which you applied. There is no statutory or regulatory allowance for appealing the scoring, ranking, or denial.

As there is no allowance for an appeal of the denial of your application for the issuance of a retail marijuana store license, no further action will be taken by the Department on your Notice of Appeal.

Thank you for your interest in this application process.

Jorge Pupo
Deputy Executive Director
Marijuana Enforcement Division

AA 000372



1 **SUMM**
2 THEODORE PARKER, III, ESQ.
3 Nevada Bar No. 4716
4 **PARKER, NELSON & ASSOCIATES, CHTD.**
5 2460 Professional Court, Suite 200
6 Las Vegas, Nevada 89128
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10 *Attorneys for Plaintiff*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 NEVADA WELLNESS CENTER, LLC, a
14 Nevada Limited Liability Company,

15 Plaintiff,

16 v.

17 STATE OF NEVADA, DEPARTMENT OF
18 TAXATION; and DOES I through X,
19 inclusive; and ROE CORPORATIONS I
20 through X, inclusive,

21 Defendants.

CASE NO.:
DEPT. NO.:

A-19-787540-W
Department 18

SUMMONS

22 **NOTICE: YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU**
23 **WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ**
24 **THE INFORMATION BELOW.**

25 **TO THE DEFENDANT:** A civil Complaint has been filed by Plaintiff against you for the
26 relief set forth in the Complaint.

27 **State of Nevada, Department of Taxation**
28 **1550 College Parkway, Suite 115**
Carson City, NV 89706-7937

1. If you intend to defend this lawsuit, within 20 days after this Summons is served on
you exclusive of the day of service, you must do the following:

- a. File with the Clerk of this Court, whose address is shown below, a formal
written response to the Complaint in accordance with the rules of the court.
- b. Serve a copy of your response upon the attorney whose name and address is
shown below.

2. Unless you respond, your default will be entered upon application of the Plaintiffs
and this Court may enter a judgment against you for the relief demanded in the Complaint, which
could result in the taking of money or property or other relief requested in the Complaint.

1 3. If you intend to seek the advice of an attorney in this matter, you should do so
2 promptly so that your response may be filed on time.


3 Issued at direction of:

4 **PARKER NELSON & ASSOCIATES, CHTD.**

5 By: 
6 THEODORE PARKER, III, ESQ.
7 Nevada Bar No. 4716
8 2460 Professional Court, Suite 200
9 Las Vegas, Nevada 89128

10 *Attorney for Plaintiff*

CLERK OF COURT

By:  1/15/2019
DEPUTY CLERK
County Courthouse
200 Lewis Avenue
Las Vegas, Nevada 89155

Attorney or Party without Attorney: Parker, Nelson & Associates, Chtd. Theodore Parker, III, Esq. (SBN 4716) 2460 Professional Court Suite 200 Las Vegas, NV 89128 Telephone No: (702) 868-8000 Attorney For: Plaintiff			For Court Use Only		
Ref. No. or File No.: NV WELLNESS CENTER/DEPT					
Insert name of Court, and Judicial District and Branch Court: District Court Clark County Nevada					
Plaintiff: NEVADA WELLNESS CENTER, LLC, a Nevada Limited Liability Company, Defendant: STATE OF NEVADA, DEPARTMENT OF TAXATION, et al.					
AFFIDAVIT OF SERVICE		Hearing Date:	Time:	Dept/Div:	Case Number: A-19-787540-W

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the Summons, Complaint and Petition for Judicial Review or Writ of Mandamus
3.
 - a. Party served: State of Nevada, Department of Taxation
 - b. Person served: Tina Padovano - Executive Assistant, A person of suitable age and discretion, authorized to accept service at address shown in item 4.
4. Address where the party was served: 1550 College Parkway, Suite 115
Carson City, NV 89706
5. I served the party:
 - a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive process for the party (1) on: Wed, Jan 16 2019 (2) at: 01:55 PM

Fee for Service: \$0.00

I Declare under penalty of perjury under the laws of the State of NEVADA that the foregoing is true and correct.

6. Person Who Served Papers:
 - a. Toni Ruckman (R-052005, Washoe)
 - b. FIRST LEGAL
NEVADA PI/PS LICENSE 1452
2920 N. GREEN VALLEY PARKWAY, SUITE 514
HENDERSON, NV 89014
 - c. (702) 671-4002

19 Jan 19 (Date) Toni Ruckman (Signature)

7. STATE OF NEVADA, COUNTY OF Washoe
 Subscribed and sworn to (or affirmed) before on this 19 day of Jan, 2019 by Toni Ruckman (R-052005, Washoe)
 proved to me on the basis of satisfactory evidence to be the person who appeared before me.



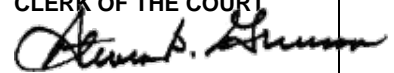
Jessica Marquis
 (Notary Signature)



AFFIDAVIT OF SERVICE

2980520
(55104735)

AA 000375



David R. Koch (NV Bar #8830)
Steven B. Scow (NV Bar #9906)
Brody R. Wight (NV Bar #13615)
Daniel G. Scow (NV Bar #14614)
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Attorneys for Intervenor
Nevada Organic Remedies, LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

ETW MANAGEMENT GROUP LLC, a Nevada
limited liability company; GLOBAL
HARMONY LLC, a Nevada limited liability
company; GREEN LEAF FARMS HOLDINGS
LLC, a Nevada limited liability company;
HERBAL CHOICE INC., a Nevada
corporation; JUST QUALITY, LLC, a Nevada
limited liability company; LIBRA WELLNESS
CENTER, LLC, a Nevada limited liability
company; MOTHER HERB, INC., a Nevada
corporation; NEVCANN LLC, a Nevada
limited liability company; RED EARTH LLC, a
Nevada limited liability company; THC
NEVADA LLC, a Nevada limited liability
company; and ZION GARDENS LLC, a
Nevada limited liability company,

Plaintiffs,

vs.

STATE OF NEVADA, DEPARTMENT OF
TAXATION, a Nevada administrative agency;
DOES 1 through 20, inclusive; and ROE
CORPORATIONS 1 through 20, inclusive,

Defendants,

Case No. A-19-787004-B
Dept. No. 11

MOTION TO INTERVENE

1 NEVADA ORGANIC REMEDIES, LLC

2 Applicant for Intervention

3 Nevada Organic Remedies, LLC ("NOR"), by and through its attorneys, Koch &
4 Scow, LLC, hereby respectfully moves to intervene in the above captioned case pursuant
5 to NRCP 24 and NRS 12.130. This Motion is supported by the following Memorandum of
6 Points and Authorities and exhibits attached thereto, the pleadings and papers on file
7 herein, and any other materials this Court may wish to consider.

8
9 DATED: January 25, 2019

KOCH & SCOW, LLC

10 By: /s/ David R. Koch
11 David R. Koch, Esq.
12 *Attorneys for Intervenor*
13 *Nevada Organic Remedies*

14 **NOTICE OF HEARING OF MOTION**

15 TO: ALL PARTIES AND THEIR COUNSEL OF RECORD:

16 PLEASE TAKE NOTICE that Intervenor Nevada Organic Remedies' ("NOR"),
17 Motion to Intervene is set for hearing before the Court in Department XVIII of the Eighth
18 District Court, located at 200 Lewis Ave., Las Vegas, Nevada, on March 01
19 2019, at In Chambers am/pm.

20
21
22 DATED: January 25, 2019

KOCH & SCOW, LLC

23 By: /s/ David R. Koch
24 David R. Koch, Esq.
25 *Attorneys for Intervenor*
26 *Nevada Organic Remedies*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3
4 NOR files this timely Motion to Intervene in this action to protect its interests as
5 the owner of seven conditional recreational marijuana dispensary licenses issued to it by
6 the State of Nevada Department of Taxation ("Department") on December 5, 2018. NOR
7 should be permitted to intervene in this action to protect its conditional licenses, as this
8 action challenges the entire process by which the Department evaluated applications,
9 ranked applicants, and ultimately issued licenses according to those rankings. All of the
10 Plaintiffs listed in the caption above (the "Plaintiffs") have asked this Court to essentially
11 void the entire application evaluation process used by the Department and to award
12 Plaintiffs damages. This relief, if granted, may impair the interests of NOR, which
13 earned higher application rankings in each of the jurisdictions where Plaintiffs also
14 applied, and which was awarded provisional licenses in all five relevant jurisdictions:
15 Clark County, Las Vegas, North Las Vegas, Reno, and Nye County.

16 NOR's Motion meets the standards for intervention under NRCP 24 and *American*
17 *Home Assurance Corp. v. Eighth Judicial District Ct. ex rel. County of Clark*, 122 Nev. 1229,
18 1234, 147 P.3d 1120, 1122 (2006), and this Court should permit NOR's intervention and
19 participation in this action.

20 **BACKGROUND**

21
22 On August 16, 2018, the Department issued notice for an application period
23 within which the Department sought applications from qualified applicants for sixty-
24 four (64) recreational marijuana retail store licenses throughout various jurisdictions in
25 Nevada. (First Amended Complaint and Petition for Judicial Review or Writ of
26 Mandamus at ¶¶6-7 ("FAC") on file herein). The application period for those licenses
27 opened on September 7, 2018 and closed on September 20, 2018. (*Id.* at ¶8). The
28 Department allocated ten licenses for Unincorporated Clark County, Nevada; ten

1 licenses for Las Vegas, Nevada; six licenses for Henderson, Nevada; five licenses for
2 North Las Vegas, Nevada; six licenses for Reno, Nevada; one license for Sparks, Nevada;
3 and one license for Nye County, Nevada. The Department stated that it would issue
4 conditional licenses to successful applicants on or before December 5, 2018. (*Id.* at ¶10).

5 NOR submitted applications for eight recreational marijuana retail store licenses
6 during the September 2018 application period in the following Nevada jurisdictions:
7 Unincorporated Clark County, City of Las Vegas, City of North Las Vegas, City of
8 Henderson, City of Reno, Nye County, Carson City and City of Sparks. (*See* Exhibit 1,
9 Declaration of Andrew Jolley at ¶ 6). On December 5, 2018, the Department sent letters
10 to NOR indicating that the Department intended to conditionally approve NOR's
11 applications for licenses in Unincorporated Clark County, City of Las Vegas, City of
12 North Las Vegas, City of Henderson, City of Reno, Carson City and Nye County. (*Id.* at
13 ¶ 7).

14 NOR is informed and believes that the Department received numerous
15 applications for licenses in each of the jurisdictions in which NOR applied, which
16 triggered the Department's obligation to rank all applications within each jurisdiction
17 from first to last based on compliance with NRS 453D and the Adopted Regulation of
18 the Department of Taxation, LCB File No. R092-17 ("R092-17"). (*Id.* at ¶ 8). NOR is
19 further informed and believes that the Department, after ranking the applications,
20 issued licenses to the highest-ranked applicants in each jurisdiction until the Department
21 had issued the maximum number of licenses authorized for issuance in each jurisdiction.
22 (*Id.* at ¶ 9). NOR is informed and believes that the Department issued NOR seven
23 conditional licenses because NOR scored second highest among overall applicants in six
24 jurisdictions and had the highest score for any applicant in Nye County. (Jolley Decl., ¶
25 10).

26 On January 4, 2019, Plaintiffs filed their Complaint alleging, primarily, that the
27 process used by the Department in deciding how to grant licenses is unconstitutional
28

1 under the Nevada and U.S. Constitutions. The Complaint seeks damages and also
2 declaratory relief stating that (1) the Factors [used by the Department to determine who
3 would receive a license] do not comply with NRS 453D.210(6) because they are not
4 impartial or a competitive bidding process; and (2) the [Department] violated Section
5 80(5) of the Regulations by issuing multiple retail marijuana licenses to the same entity
6 or group of persons. (Complaint, ¶ 80). If the claims were to be granted, particularly the
7 claim for declaratory relief, NOR could lose the licenses granted to it.

8 NOR wishes to intervene in this action to protect its unique legal interests in
9 NOR's licenses issued by the Department. Accordingly, NOR respectfully requests that
10 this Court enter an Order allowing NOR to intervene in this action as a defendant, and
11 to file the [Proposed] Answer to the First Amended Complaint, which is attached hereto
12 as Exhibit 2. NOR has also attached a [Proposed] Order Granting NOR's Motion to
13 Intervene as Exhibit 3 for the convenience of the Court.

14 The Court should also note that at least three other cases have been filed in Clark
15 County District court by various dispensaries against the Department with similar
16 allegations regarding the Department's actions in granting and denying the licenses at
17 issue here. These cases include:

- 18 • *DH Flamingo, Inc. et al. v. State Ex Rel. Dept. of Taxation, et al.*, Case No.
19 A-19-787035-C;
- 20 • *Serenity Wellness Center, LLC, et al. v. The State of Nevada, Department of*
21 *Taxation*, Case No. A-19-786962-B; and
- 22 • *MM Development Company, INC., et al. v. The State of Nevada,*
23 *Department of Taxation*, Case No. A-18-785818-W.

24 NOR, as well as several other dispensaries that were recently granted licenses, has
25 already been named as a defendant in the *DH Flamingo* action, and is moving to
26 intervene in the other two cases. NOR expects that *DH Flamingo* and most, if not all, of
27
28

1 the other cases above will eventually be consolidated due to the similarity of facts and
2 legal issues, rendering it inevitable that NOR will be a party to each of the listed actions.

3 LEGAL ANALYSIS

4 “NRS 12.130 allows, before the trial commences, ‘any person . . . who has an
5 interest in the matter in litigation, in the success of either of the parties, or an interest
6 against both’ to intervene in an action under the Nevada Rules of Civil Procedure
7 (NRCP).” *American Home Assurance Corp. v. Eighth Judicial District Ct. ex rel. County of*
8 *Clark*, 122 Nev. 1229, 1234, 147 P.3d 1120, 1122 (2006). At issue here, NRCP 24(a)(2)
9 permits anyone, upon timely application, to intervene in an action:

10 when the applicant claims an interest relating to the property or
11 transaction which is the subject of the action and the applicant is so
12 situated that the disposition of the action may as a practical matter impair
13 or impede the applicant’s ability to protect that interest, unless the
applicant’s interest is adequately represented by existing parties.

14 Further, “an application to intervene must be ‘accompanied by a pleading setting forth
15 the claim . . . for which intervention is sought.’” *American Home Assurance Corp.*, 122 Nev.
16 at 1234, 147 P.3d 1122.

17 The Nevada Supreme Court has imposed four requirements on an application
18 seeking to intervene in an action: (1) the application must be timely; (2) the applicant
19 must show an interest in the subject matter of the action; (3) the applicant must show
20 that the protection of its interest may be impaired by the disposition of the action; and
21 (4) the applicant must show that its interest is not adequately represented by an existing
22 party. *See American Home Assurance Corp.*, 122 Nev. at 1238, 147 P.3d at 1126. In applying
23 this standard, courts “normally follow ‘practical and equitable considerations’ and
24

25 ¹ As noted in *American Home Assurance Corp.*, “[b]y intervening, the applicant
26 becomes a party to the action in order to do one of the three following things: (1) join the
27 plaintiff in the complaint’s demand; (2) resist, with the defendant, the plaintiff’s claims; or
28 (3) make a demand adverse to both the plaintiff and the defendant.” *American Home*
Assurance Corp., 122 Nev. at 1234 n.4, 147 P.3d at 1122 (citing NRS 12.130(2)). NOR
would intervene as a defendant.

1 construe the Rule ‘broadly in favor of proposed intervenors.’” *Wilderness Soc’y v. U.S.*
2 *Forest Service*, 630 F.3d 1173, 1179 (9th Cir. 2011) (*en banc*) (quoting *United States v. City of*
3 *Los Angeles*, 288 F.3d 391, 397 (9th Cir. 2002)). This is because “[a] liberal policy in favor
4 of intervention serves both efficient resolution of issues and broadened access to the
5 Courts.” *Id.* (quoting *City of Los Angeles*, 288 F.3d at 397-98).

6 An analysis of the four requirements imposed by the Court in *American Home*
7 *Assurance Corp.* demonstrates that NOR’s Motion to Intervene meets each of the
8 requirements and therefore should be granted.

9 First, the Motion is timely. While NRS 12.130 only states that an application to
10 intervene must be made “before trial,” this Court must determine whether an
11 application is timely under NRCP 24 by “examining the extent of prejudice to the rights
12 of the existing parties resulting from the delay and then weighing that prejudice against
13 any prejudice resulting to the applicant if intervention is denied.” *American Home*
14 *Assurance Corp.*, 122 Nev. at 1244, n.49 and n.50 (citations omitted). Here no prejudice
15 will inure to Plaintiffs or the Department should NOR be permitted to intervene.
16 Plaintiffs the original Complaint on January 4, 2019, so this case is only a few weeks old.
17 So far, no progress has been made in the case, and the Department has yet to respond to
18 the Complaint. There is simply no prejudice to any of the existing parties at this early
19 stage in the case, and there will be no delay resulting from NOR’s intervention.

20 In contrast, NOR would be significantly prejudiced if it cannot intervene in this
21 matter. NOR holds seven unique and valuable conditional licenses. The nature of the
22 relief sought by Plaintiffs is an attempt to undermine the rights of NOR and other
23 successful applicants. Plaintiffs have challenged both the process employed by the
24 Department in evaluating applications as well as validity of the conditional licenses
25 issued by the Department to successful applicants like NOR. Accordingly, this Motion is
26 timely.

1 Second, NOR has an interest in the subject matter of the action. While “no ‘bright-
2 line’ test to determine an alleged interest’s sufficiency exists,” (see *American Home*
3 *Assurance Corp.*, 122 Nev. at 1238 n.29, 147 P.3d at 1126 (noting that “federal decisions
4 involving the federal civil procedure rules are persuasive authority” and citing *Southern*
5 *California Edison Co. v. Lynch*, 307 F.3d 794, 803 (9th Cir. 2002)), an applicant must show a
6 “significantly protectable interest.” *Id.* at 1239 n.31 (citing *Donaldson v. United States*, 400
7 U.S. 517, 542 (1971), superseded in part by statute, as stated in *Ip v. U.S.*, 205 F.3d 1168,
8 1172 (9th Cir. 2000), and cited in *Sierra Club v. EPA*, 995 F.2d 1478, 1482 (9th Cir. 1993)). A
9 significantly protectable interest is one that “is protected under the law and bears a
10 relationship to the plaintiff’s claims.” *Id.* at 1239 n.32 (citing *Lynch*, 307 F.3d at 803 and
11 *Sierra Club*, 995 F.2d at 1482-84. Accordingly, a “prospective intervenor ‘has a sufficient
12 interest for intervention purposes if it will suffer a practical impairment of its interests as
13 a result of the pending litigation.’” *Wilderness Soc’y*, 630 F.3d at 1179 (quoting *California*
14 *ex rel. Lockyer v. United States*, 450 F.3d 436, 441 (9th Cir. 2006)). The types of interests
15 protected are interpreted “‘broadly, in favor of the applicants for intervention.’” *Sierra*
16 *Club v. EPA*, 995 F.2d 1478, 1481 (9th Cir. 1993) (quoting *Scotts Valley Band of Pomo*
17 *Indians of the Sugar Bowl Rancheria v. United States*, 921 F.2d 924, 926 (9th Cir. 1990)).

18 Here, NOR has a significantly protectable legal interest in the conditional licenses
19 issued by the Department of Taxation. Marijuana establishment licenses are governed
20 and protected by NRS Chapter 453D and R092-17, and it is clear that NOR’s conditional
21 licenses could suffer a practical impairment as a result of the disposition of this case
22 given the relief sought by Plaintiffs. Accordingly, NOR has shown an interest in the
23 subject matter of this action.

24 Third, NOR’s interest may be impaired by the disposition of this case. A
25 significantly protectable interest is very closely linked with the third requirement for
26 intervention as a matter of right – that the outcome of the challenge may impair the
27 proposed intervenor’s interest. Indeed, once a proposed intervenor has shown a
28

1 significantly protectable interest, courts should have “little difficulty concluding that the
2 disposition of [the] case may, as a practical matter, affect” the intervenor.” *Citizens for*
3 *Balanced Use v. Montana Wilderness Assoc.*, 647 F.3d 893, 898 (9th Cir. 2011).

4 Here, NOR, through the Department’s evaluation process conducted pursuant to
5 NRS Chapter 453D and R092-17, was awarded conditional licenses in seven (7) separate
6 jurisdictions. Plaintiffs have asked this Court to effectively void the entire application
7 evaluation process employed by the Department and to award Plaintiffs a license in each
8 jurisdiction for which they submitted an application. This relief, if granted, would
9 necessarily harm at least one or more of the applicants who ranked higher than Plaintiffs
10 in each jurisdiction where they applied, and NOR holds provisional licenses in five of
11 those jurisdictions. The relief requested in Plaintiffs’ FAC presents a classic “zero sum
12 game” scenario, where if Plaintiffs were awarded a license in a given jurisdiction
13 through this case, a previously successful applicant in that jurisdiction would have to
14 lose its license. Accordingly, NOR’s interests may be impaired by the disposition of this
15 case.

16 Finally, NOR’s interest is not adequately represented by an existing party. A
17 proposed intervenor can establish this factor if it “shows that representation of [its]
18 interest ‘may be’ inadequate,” and the “burden of making that showing should be
19 treated as minimal.” *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972).
20 Indeed, a proposed intervenor “should be treated as the best judge of whether the
21 existing parties adequately represent . . . [its] interests, and . . . any doubt regarding
22 adequacy of representation should be resolved in [its] favor.” 6 Edward J. Brunet,
23 *Moore’s Federal Practice* § 24.03[4][a] (3d ed. 1997).

24 Here, while the Department will presumably defend its application evaluation
25 process by showing that it complied with NRS Chapter 453D and R092-17 throughout
26 that process, the Department will not defend each of NOR’s unique and valuable
27 licenses. If the application evaluation process conducted by the Department and
28

1 resulting ranked list of applicants are called into question, then NOR will need to defend
2 its applications against all other applicants, including Plaintiffs. The Department simply
3 has no interest in specifically defending NOR's licenses versus other applicants, nor is
4 the Department equipped to do so. Accordingly, NOR has met its minimal burden of
5 showing that its interests are not adequately represented.

6 CONCLUSION

7
8 For the reasons set forth above, NOR respectfully requests that this Court enter an
9 Order allowing NOR to intervene in this action as a Defendant and allowing NOR to file
10 the [Proposed] Answer attached hereto.

11 KOCH & SCOW, LLC

12
13 By: /s/ David R. Koch
14 David R. Koch, Esq.
15 Steven B. Scow, Esq.
16 Brody R. Wight, Esq.
17 Daniel G. Scow, Esq.
18 11500 S. Eastern Ave., Suite 210
19 Henderson, Nevada 89052
20 *Attorneys for Intervenor*
21 *Nevada Organic Remedies*
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CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. I certify that on January 25, 2019, I caused the foregoing document entitled: **MOTION TO INTERVENE** to be served as follows:

- ☒ Pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in in the mail; and / or;
- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Henderson, Nevada; and / or
- ☐ Pursuant to EDCR 7.26, to be sent via facsimile; and / or
- ☐ hand-delivered to the attorney(s) listed below at the address indicated below;
- ☐ to be delivered overnight via an overnight delivery service in lieu of delivery by mail to the addressee (s); and or:
- ☐ by electronic mailing to:

MGA Docketing docket@mgalaw.com

Executed on January 25, 2019 at Henderson, Nevada.

/s/ David R. Koch
David R. Koch

EXHIBIT 1

EXHIBIT 1

1 **DECL**

2 David R. Koch (NV Bar #8830)
3 Steven B. Scow (NV Bar #9906)
4 Brody R. Wight (NV Bar #13615)
5 Daniel G. Scow (NV Bar #14614)
6 KOCH & SCOW LLC
7 11500 S. Eastern Ave., Suite 210
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9 Telephone: 702.318.5040
10 Facsimile: 702.318.5039
11 dkoch@kochscow.com
12 sscow@kochscow.com

13 *Attorneys for Intervenor*
14 *Nevada Organic Remedies*

15 **EIGHTH JUDICIAL DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 ETW MANAGEMENT GROUP LLC, a Nevada
18 limited liability company; GLOBAL
19 HARMONY LLC, a Nevada limited liability
20 company; GREEN LEAF FARMS HOLDINGS
21 LLC, a Nevada limited liability company;
22 HERBAL CHOICE INC., a Nevada
23 corporation; JUST QUALITY, LLC, a Nevada
24 limited liability company; LIBRA WELLNESS
25 CENTER, LLC, a Nevada limited liability
26 company; MOTHER HERB, INC., a Nevada
27 corporation; NEVCANN LLC, a Nevada
28 limited liability company; RED EARTH LLC, a
Nevada limited liability company; THC
NEVADA LLC, a Nevada limited liability
company; and ZION GARDENS LLC, a
Nevada limited liability company,

Plaintiffs,

vs.

STATE OF NEVADA, DEPARTMENT OF
TAXATION, a Nevada administrative agency;
DOES 1 through 20, inclusive; and ROE
CORPORATIONS 1 through 20, inclusive,

Defendants,

NEVADA ORGANIC REMEDIES, LLC

Applicant for Intervention

Case No. A-19-787004-B
Dept. No. 11

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1 8. I am informed and believe that the Department received numerous applications
2 for licenses in each of the jurisdictions in which NOR applied, which triggered the Department's
3 obligations to rank all applications within each such jurisdiction from first to last based on
4 compliance with NRS 453D and the Adopted Regulation of the Department of Taxation, LCB
5 File No. R092-17 ("R092-17").

6 9. I am further informed and believe that the Department, after ranking the
7 applications, issued licenses to the highest-ranked applicants in each jurisdiction until the
8 Department had issued the maximum number of licenses authorized for issuance in that
9 jurisdiction.

10 10. I am informed and believe that the Department issued NOR seven conditional
11 licenses because NOR scored second highest among overall applicants in six jurisdictions, and
12 had the highest score for any applicant in Nye County.

13 I declare under penalty of perjury under the law of the State of Nevada that the foregoing
14 is true and correct.

15 DATED this 17 day of January, 2019.

16
17 
18 _____
19 ANDREW JOLLEY
20
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EXHIBIT 2

EXHIBIT 2

1 David R. Koch (NV Bar #8830)
2 Steven B. Scow (NV Bar #9906)
3 Brody R. Wight (NV Bar #13615)
4 Daniel G. Scow (NV Bar #14614)
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10 dkoch@kochscow.com
11 sscow@kochscow.com

12 *Attorneys for Intervenor*
13 Nevada Organic Remedies, LLC

14 **EIGHTH JUDICIAL DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 ETW MANAGEMENT GROUP LLC, a Nevada
17 limited liability company; GLOBAL
18 HARMONY LLC, a Nevada limited liability
19 company; GREEN LEAF FARMS HOLDINGS
20 LLC, a Nevada limited liability company;
21 HERBAL CHOICE INC., a Nevada
22 corporation; JUST QUALITY, LLC, a Nevada
23 limited liability company; LIBRA WELLNESS
24 CENTER, LLC, a Nevada limited liability
25 company; MOTHER HERB, INC., a Nevada
26 corporation; NEVCANN LLC, a Nevada
27 limited liability company; RED EARTH LLC, a
28 Nevada limited liability company; THC
NEVADA LLC, a Nevada limited liability
company; and ZION GARDENS LLC, a
Nevada limited liability company,

Plaintiffs,

vs.

STATE OF NEVADA, DEPARTMENT OF
TAXATION, a Nevada administrative agency;
DOES 1 through 20, inclusive; and ROE
CORPORATIONS 1 through 20, inclusive,

Defendants,

NEVADA ORGANIC REMEDIES, LLC

Applicant for Intervention

Case No. A-19-787004-B
Dept. No. 11

**ANSWER TO PLAINTIFFS'
COMPLAINT**

1 Nevada Organic Remedies, (collectively "NOR"), by and through its attorneys of
2 record, Koch & Scow, LLC file their answer to Plaintiffs' Complaint as follows:

3 **PARTIES**

4 1. NOR does not have sufficient knowledge or information as to the truth or
5 falsity of the allegations contained in paragraphs 1 through 14 of the Complaint and on
6 that basis denies these allegations.

7 **JURISDICTION AND VENUE**

8 2. The allegations contained in paragraphs 15 and 16 of the Complaint contain
9 legal conclusions, and no response is necessary.

10 **GENERAL ALLEGATIONS**

11 3. In response to paragraph 17 of the Complaint, NOR repeats and reasserts all
12 prior responses as though fully set forth herein.

13 ***The statutory Scheme Governing Retail Marijuana Licenses***

14 4. In response to paragraphs 8 through 20 of the Complaint, NOR admits that
15 the statutes and regulations mentioned in the paragraphs have been enacted. As to the
16 content of the statutes and regulations, the documents speak for themselves, and no
17 response is necessary.

18 5. NOR admits the allegations contained in paragraphs 21 through 23 of the
19 Complaint.

20 6. In response to paragraphs 24 through 26 of the Complaint, the referenced
21 statutes speak for themselves and no response is necessary.

22 7. In response to paragraphs 27 through 31 of the Complaint, NOR admits that
23 the regulations referenced were adopted by the Department of Taxation. As to the
24 contents of the regulations, the documents speak for themselves and no response is
25 necessary. NOR does state, however, that it disagrees with and denies Plaintiffs'
26 interpretation of the regulations.

27 ***Plaintiffs' Arbitrary Denial of Retail Marijuana Licenses***

28 8. NOR does not have sufficient knowledge or information as to the truth or

1 falsity of the allegations contained in paragraphs 33 through 37 of the Complaint and on
2 that basis denies these allegations.

3 **FIRST CLAIM FOR RELIEF**

4 **Violation of Substantive Due Process**

5 9. In response to paragraph 38 of the Complaint, NOR repeats and reasserts all
6 prior responses as though fully set forth herein.

7 10. In response to paragraphs 39 and 40 of the Complaint, the referenced
8 documents speak for themselves and no response is necessary.

9 11. Paragraphs 41 and 42 of the Complaint contain legal conclusions, and no
10 response is necessary.

11 12. NOR does not have sufficient knowledge or information as to the truth or
12 falsity of the allegations contained in paragraph 43 of the Complaint and on that basis
13 denies these allegations.

14 13. Paragraphs 44 through 47 of the Complaint contain legal conclusions, and
15 no response is necessary. Inasmuch as the allegations do not contain legal conclusions,
16 NOR denies the allegations.

17 **SECOND CLAIM FOR RELIEF**

18 **Violation of Procedural Due Process**

19
20 14. In response to paragraph 48 of the Complaint, NOR repeats and reasserts all
21 prior responses as though fully set forth herein.

22 15. In response to paragraphs 49 and 50 of the Complaint, the referenced
23 documents speak for themselves and no response is necessary.

24 16. Paragraphs 51 through 53 of the Complaint contain legal conclusions, and
25 no response is necessary.

26 17. NOR does not have sufficient knowledge or information as to the truth or
27 falsity of the allegations contained in paragraph 54 of the Complaint and on that basis
28 denies these allegations.

18. Paragraphs 55 through 59 of the Complaint contain legal conclusions, and

1 no response is necessary. Insomuch as the allegations do not contain legal conclusions,
2 NOR denies the allegations.

3
4 **THIRD CLAIM FOR RELIEF**

5 **Violation of Equal Protection**

6 19. In response to paragraph 60 of the Complaint, NOR repeats and reasserts all
7 prior responses as though fully set forth herein.

8 20. In response to paragraphs 61 and 62 of the Complaint, the referenced
9 documents speak for themselves and no response is necessary.

10 21. Paragraphs 63 through 70 of the Complaint contain legal conclusions, and
11 no response is necessary. Insomuch as the allegations do not contain legal conclusions,
12 NOR denies the allegations.

13
14 **FOURTH CLAIM FOR RELIEF**

15 **Declaratory Judgment**

16 22. In response to paragraph 71 of the Complaint, NOR repeats and reasserts all
17 prior responses as though fully set forth herein.

18 23. In response to paragraphs 72 through 74 of the Complaint, NOR admits that
19 the statutes and regulations mentioned in the paragraphs have been enacted. As to the
20 content of the statutes and regulations, the documents speak for themselves, and no
21 response is necessary.

22 24. Paragraphs 75 through 81 of the Complaint contain legal conclusions, and
23 no response is necessary. Insomuch as the allegations do not contain legal conclusions,
24 NOR denies the allegations.

25 **GENERAL DENIAL**

26 To the extent a further response is required to any allegation set forth in the
27 Complaint, NOR denies such allegation.
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AFFIRMATIVE DEFENSES

AFFIRMATIVE DEFENSE NO. 1

The Complaint and each claim for relief fails to state a claim upon which relief can be granted.

AFFIRMATIVE DEFENSE NO. 2

The actions of Defendants the State of Nevada and Nevada Department of Taxation were all official acts that were done in compliance with applicable laws and regulations.

AFFIRMATIVE DEFENSE NO. 3

Plaintiffs' claims are barred because Plaintiffs have failed to exhaust administrative remedies.

AFFIRMATIVE DEFENSE NO. 4

Plaintiffs have failed to join necessary and indispensable parties to this litigation under NRCP 19 as the Court cannot grant any of Plaintiffs' claims without affecting the rights and privileges of those parties who received the licenses at issue as well as other third parties.

AFFIRMATIVE DEFENSE NO. 5

The actions of Defendants the State of Nevada and Nevada Department of Taxation were not arbitrary or capricious, and Defendants had a rational basis for all of the actions taken in the licensing process at issue.

AFFIRMATIVE DEFENSE NO. 6

Because this case is in its infancy, NOR has not yet discovered all relevant facts. Additional facts may support the assertion of additional affirmative defenses, including, but not limited to, those enumerated in NRCP 8(c). NOR reserves the right to assert such affirmative defenses as discovery proceeds.

AFFIRMATIVE DEFENSE NO. 7

Plaintiffs have no constitutionally protected rights to the licenses at issue in this case.

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AFFIRMATIVE DEFENSE NO. 7

The factors used by the Department of Taxation in determining what entities would receive a retail marijuana license were not arbitrary and capricious.

AFFIRMATIVE DEFENSE NO. 8

It has been necessary for Defendant to employ the services of an attorney to defend this action and a reasonable sum should be allowed Defendant as and for attorneys' fees, together with its costs expended in this action.

PRAYER FOR RELIEF

WHEREFORE, NOR prays for judgment as follows:

1. That Plaintiffs take nothing by way of its Complaint and that the same be dismissed with prejudice;
2. For costs of suit and reasonable attorneys' fees; and
3. For any other such relief as this Court deems just and proper under the circumstances.

DATED: January 25, 2019

KOCH & SCOW, LLC

By: /s/ David R. Koch
David R. Koch, Esq.
*Attorneys for Intervenor
Nevada Organic Remedies*

EXHIBIT 3

EXHIBIT 3

1 David R. Koch (NV Bar #8830)
Steven B. Scow (NV Bar #9906)
2 Brody R. Wight (NV Bar #13615)
Daniel G. Scow (NV Bar #14614)
3 KOCH & SCOW LLC
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4 Henderson, Nevada 89052
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6 sscow@kochscow.com

7 *Attorneys for Intervenor*
8 Nevada Organic Remedies, LLC

9
10 **EIGHTH JUDICIAL DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 ETW MANAGEMENT GROUP LLC, a Nevada
limited liability company; GLOBAL
13 HARMONY LLC, a Nevada limited liability
company; GREEN LEAF FARMS HOLDINGS
14 LLC, a Nevada limited liability company;
HERBAL CHOICE INC., a Nevada
15 corporation; JUST QUALITY, LLC, a Nevada
limited liability company; LIBRA WELLNESS
16 CENTER, LLC, a Nevada limited liability
company; MOTHER HERB, INC., a Nevada
17 corporation; NEVCANN LLC, a Nevada
limited liability company; RED EARTH LLC, a
18 Nevada limited liability company; THC
NEVADA LLC, a Nevada limited liability
19 company; and ZION GARDENS LLC, a
20 Nevada limited liability company,

21 Plaintiffs,

22 vs.

23 STATE OF NEVADA, DEPARTMENT OF
TAXATION, a Nevada administrative agency;
24 DOES 1 through 20, inclusive; and ROE
25 CORPORATIONS 1 through 20, inclusive,

26 Defendants,

27 NEVADA ORGANIC REMEDIES, LLC

28 Applicant for Intervention

Case No. A-19-787004-B
Dept. No. 11

**ORDER GRANTING MOTION TO
INTERVENE**

1 The Court, having reviewed the Intervenor's Motion to Intervene, and good cause
2 appearing,

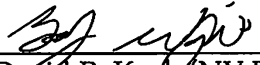
3 IT IS HEREBY ORDERED:

4 Intervenor's Motion to Intervene is granted, and Nevada Organic Remedies shall
5 intervene as a Defendant in the above-captioned case as a necessary party to the action
6 pursuant to NRCP 24 and NRS 12.130. The proposed answer attached to the Motion to
7 Intervene as exhibit 2 shall be filed in this case.

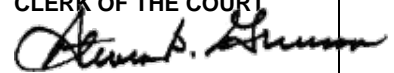
8 DATED this ____ day of _____, 2019.

9
10 _____
DISTRICT COURT JUDGE

11 *Respectfully submitted by:*
12 KOCH & SCOW LLC

13 
14 David R. Koch (NV Bar #8830)
15 Steven B. Scow (NV Bar #9906)
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Attorneys for Intervenor
Nevada Organic Remedies, LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SERENITY WELLNESS CENTER, LLC, a
Nevada limited liability company, TGIG, LLC,
a Nevada limited liability company, NULEAF
INCLINE DISPENSARY, LLC, a Nevada
limited liability company, NEVADA
HOLISTIC MEDICINE, LLC, a Nevada limited
liability company, TRYKE COMPANIES SO
NV, LLC, a Nevada limited liability company,
TRYKE COMPANIES RENO, LLC, a Nevada
limited liability company, PARADISE
WELLNESS CENTER, LLC, a Nevada limited
liability company, GBS NEVADA PARTNERS,
LLC, a Nevada limited liability company,
FIDELIS HOLDINGS, LLC, a Nevada limited
liability company, GRAVITAS NEVADA, LLC,
a Nevada limited liability company, NEVADA
PURE, LLC, a Nevada limited liability
company, MEDIFARM, LLC a Nevada limited
liability company, DOE PLAINTIFFS I through
X; and ROE ENTITY PLAINTIFFS I through X,

Plaintiffs,

vs.

STATE OF NEVADA, DEPARTMENT OF
TAXATION,

Defendant;

Case No. A-19-786962-B
Dept. No. 11

MOTION TO INTERVENE

1 NEVADA ORGANIC REMEDIES, LLC

2 Applicant for Intervention

3 Nevada Organic Remedies, LLC ("NOR"), by and through its attorneys, Koch &
4 Scow, LLC, hereby respectfully moves to intervene in the above captioned case pursuant
5 to NRCP 24 and NRS 12.130. This Motion is supported by the following Memorandum of
6 Points and Authorities and exhibits attached thereto, the pleadings and papers on file
7 herein, and any other materials this Court may wish to consider.

8
9 DATED: January 25, 2019

KOCH & SCOW, LLC

10 By: /s/ David R. Koch
11 David R. Koch, Esq.
12 *Attorneys for Intervenor*
13 *Nevada Organic Remedies*

14 **NOTICE OF HEARING OF MOTION**

15 TO: ALL PARTIES AND THEIR COUNSEL OF RECORD:

16 PLEASE TAKE NOTICE that Intervenor Nevada Organic Remedies' ("NOR"),
17 Motion to Intervene is set for hearing before the Court in Department XVIII of the Eighth
18 District Court, located at 200 Lewis Ave., Las Vegas, Nevada, on March 01,
19 In Chambers
20 2019, at _____ am/pm.

21
22 DATED: January 25, 2019

KOCH & SCOW, LLC

23 By: /s/ David R. Koch
24 David R. Koch, Esq.
25 *Attorneys for Intervenor*
26 *Nevada Organic Remedies*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3
4 NOR files this timely Motion to Intervene in this action to protect its interests as
5 the owner of seven conditional recreational marijuana dispensary licenses issued to it by
6 the State of Nevada Department of Taxation ("Department") on December 5, 2018. NOR
7 should be permitted to intervene in this action to protect its conditional licenses, as this
8 action challenges the entire process by which the Department evaluated applications,
9 ranked applicants, and ultimately issued licenses according to those rankings. All of the
10 Plaintiffs listed in the caption above (the "Plaintiffs") have asked this Court to essentially
11 void the entire application evaluation process used by the Department and to award
12 Plaintiffs a license in each jurisdiction for which they submitted an application. This
13 relief, if granted, may impair the interests of NOR, which earned higher application
14 rankings in each of the jurisdictions where Plaintiffs also applied, and which was
15 awarded provisional licenses in all five relevant jurisdictions: Clark County, Las Vegas,
16 North Las Vegas, Reno, and Nye County.

17 NOR's Motion meets the standards for intervention under NRCP 24 and *American*
18 *Home Assurance Corp. v. Eighth Judicial District Ct. ex rel. County of Clark*, 122 Nev. 1229,
19 1234, 147 P.3d 1120, 1122 (2006), and this Court should permit NOR's intervention and
20 participation in this action.

21 **BACKGROUND**

22
23 On August 16, 2018, the Department issued notice for an application period
24 within which the Department sought applications from qualified applicants for sixty-
25 four (64) recreational marijuana retail store licenses throughout various jurisdictions in
26 Nevada. (First Amended Complaint and Petition for Judicial Review or Writ of
27 Mandamus at ¶¶6-7 ("FAC") on file herein). The application period for those licenses
28 opened on September 7, 2018 and closed on September 20, 2018. (*Id.* at ¶8). The

1 Department allocated ten licenses for Unincorporated Clark County, Nevada; ten
2 licenses for Las Vegas, Nevada; six licenses for Henderson, Nevada; five licenses for
3 North Las Vegas, Nevada; six licenses for Reno, Nevada; one license for Sparks, Nevada;
4 and one license for Nye County, Nevada. The Department stated that it would issue
5 conditional licenses to successful applicants on or before December 5, 2018. (*Id.* at ¶10).

6 NOR submitted applications for eight recreational marijuana retail store licenses
7 during the September 2018 application period in the following Nevada jurisdictions:
8 Unincorporated Clark County, City of Las Vegas, City of North Las Vegas, City of
9 Henderson, City of Reno, Nye County, Carson City and City of Sparks. (*See* Exhibit 1,
10 Declaration of Andrew Jolley at ¶ 6). On December 5, 2018, the Department sent letters
11 to NOR indicating that the Department intended to conditionally approve NOR's
12 applications for licenses in Unincorporated Clark County, City of Las Vegas, City of
13 North Las Vegas, City of Henderson, City of Reno, Carson City and Nye County. (*Id.* at
14 ¶ 7).

15 NOR is informed and believes that the Department received numerous
16 applications for licenses in each of the jurisdictions in which NOR applied, which
17 triggered the Department's obligation to rank all applications within each jurisdiction
18 from first to last based on compliance with NRS 453D and the Adopted Regulation of
19 the Department of Taxation, LCB File No. R092-17 ("R092-17"). (*Id.* at ¶ 8). NOR is
20 further informed and believes that the Department, after ranking the applications,
21 issued licenses to the highest-ranked applicants in each jurisdiction until the Department
22 had issued the maximum number of licenses authorized for issuance in each jurisdiction.
23 (*Id.* at ¶ 9). NOR is informed and believes that the Department issued NOR seven
24 conditional licenses because NOR scored second highest among overall applicants in six
25 jurisdictions and had the highest score for any applicant in Nye County. (Jolley Decl., ¶
26 10).

1 On January 4, 2019, Plaintiffs filed their Complaint. Plaintiffs alleged that the
2 Department improperly granted licenses to certain applicants such as NOR while
3 improperly failing to grant licenses to Plaintiffs. Plaintiffs make these allegations under
4 an entirely unsupported theory that the Department considered unspecified and
5 improper criteria to determine which applicants would receive a license. This theory,
6 which is the backbone of Plaintiffs' entire case, is built on a logical fallacy. Plaintiffs
7 believe that because Section 6.3 of the license Application stated that "Applications
8 that have not demonstrated a sufficient response related to the criteria set forth [in the
9 Application] will not have additional criteria considered in determining whether to issue
10 a license and will not move forward in the application process," the Department must
11 have necessarily considered additional criteria when the Applications did demonstrate a
12 sufficient response to the criteria listed in the application. (Complaint, ¶¶ 26, 27).
13 Plaintiffs then extrapolate that argument to allege that the Department necessarily used
14 unspecified and improper criteria in granting or denying licenses.¹

15 The Complaint contains numerous claims for relief, including claims for violation
16 of constitutional due process and equal protection rights, a petition for judicial review,
17 and a petition for a writ of mandamus. The claims asks the Court to reverse the granting
18 of licenses to parties such as NOR and to grant Plaintiffs those licenses.

19 NOR wishes to intervene in this action to protect its unique legal interests in
20 NOR's licenses issued by the Department. Accordingly, NOR respectfully requests that
21 this Court enter an Order allowing NOR to intervene in this action as a defendant, and
22 to file the [Proposed] Answer to the First Amended Complaint, which is attached hereto
23 as Exhibit 2. NOR has also attached a [Proposed] Order Granting NOR's Motion to
24 Intervene as Exhibit 3 for the convenience of the Court.

25
26
27 ¹ NOR states that Plaintiffs' theory of the case relies on a logical fallacy, because
28 this argument is a non sequitur. A statement by the Department that additional
criteria won't be considered in one area is not evidence that additional criteria
will be used in another area. The second statement does not follow from the first.

1 The Court should also note that at least three other cases have been filed in Clark
2 County District court by various dispensaries against the Department with similar
3 allegations regarding the Department's actions in granting and denying the licenses at
4 issue here. These cases include:

- 5 • *DH Flamingo, Inc. et al. v. State Ex Rel. Dept. of Taxation, et al.*, Case No.
6 A-19-787035-C;
- 7 • *ETW Management Group LLC, et al. v. State of Nevada, Department of*
8 *Taxation, et al.*, Case No. A-19-787004-B; and
- 9 • *MM Development Company, INC., et al. v. The State of Nevada,*
10 *Department of Taxation*, Case No. A-18-785818-W.

11 NOR, as well as several other dispensaries that were recently granted licenses, has
12 already been named as a defendant in the *DH Flamingo* action, and is moving to
13 intervene in the other two cases. NOR expects that *DH Flamingo* and most, if not all, of
14 the other cases above will eventually be consolidated due to the similarity of facts and
15 legal issues, rendering it inevitable that NOR will be a party to each of the listed actions.

16 LEGAL ANALYSIS

17 "NRS 12.130 allows, before the trial commences, 'any person . . . who has an
18 interest in the matter in litigation, in the success of either of the parties, or an interest
19 against both' to intervene in an action under the Nevada Rules of Civil Procedure
20 (NRCP)." *American Home Assurance Corp. v. Eighth Judicial District Ct. ex rel. County of*
21 *Clark*, 122 Nev. 1229, 1234, 147 P.3d 1120, 1122 (2006). At issue here, NRCP 24(a)(2)
22 permits anyone, upon timely application, to intervene in an action:

23 when the applicant claims an interest relating to the property or
24 transaction which is the subject of the action and the applicant is so
25 situated that the disposition of the action may as a practical matter impair
26 or impede the applicant's ability to protect that interest, unless the
27 applicant's interest is adequately represented by existing parties.

1 Further, “an application to intervene must be ‘accompanied by a pleading² setting forth
2 the claim . . . for which intervention is sought.’” *American Home Assurance Corp.*, 122 Nev.
3 at 1234, 147 P.3d 1122.

4 The Nevada Supreme Court has imposed four requirements on an application
5 seeking to intervene in an action: (1) the application must be timely; (2) the applicant
6 must show an interest in the subject matter of the action; (3) the applicant must show
7 that the protection of its interest may be impaired by the disposition of the action; and
8 (4) the applicant must show that its interest is not adequately represented by an existing
9 party. *See American Home Assurance Corp.*, 122 Nev. at 1238, 147 P.3d at 1126. In applying
10 this standard, courts “normally follow ‘practical and equitable considerations’ and
11 construe the Rule ‘broadly in favor of proposed intervenors.’” *Wilderness Soc’y v. U.S.*
12 *Forest Service*, 630 F.3d 1173, 1179 (9th Cir. 2011) (*en banc*) (quoting *United States v. City of*
13 *Los Angeles*, 288 F.3d 391, 397 (9th Cir. 2002)). This is because “[a] liberal policy in favor
14 of intervention serves both efficient resolution of issues and broadened access to the
15 Courts.” *Id.* (quoting *City of Los Angeles*, 288 F.3d at 397-98).

16 An analysis of the four requirements imposed by the Court in *American Home*
17 *Assurance Corp.* demonstrates that NOR’s Motion to Intervene meets each of the
18 requirements and therefore should be granted.

19 First, the Motion is timely. While NRS 12.130 only states that an application to
20 intervene must be made “before trial,” this Court must determine whether an
21 application is timely under NRCP 24 by “examining the extent of prejudice to the rights
22 of the existing parties resulting from the delay and then weighing that prejudice against
23 any prejudice resulting to the applicant if intervention is denied.” *American Home*

24
25 ² As noted in *American Home Assurance Corp.*, “[b]y intervening, the applicant
26 becomes a party to the action in order to do one of the three following things: (1) join the
27 plaintiff in the complaint’s demand; (2) resist, with the defendant, the plaintiff’s claims; or
28 (3) make a demand adverse to both the plaintiff and the defendant.” *American Home*
Assurance Corp., 122 Nev. at 1234 n.4, 147 P.3d at 1122 (citing NRS 12.130(2). NOR
would intervene as a defendant.

1 *Assurance Corp.*, 122 Nev. at 1244, n.49 and n.50 (citations omitted). Here no prejudice
2 will inure to Plaintiffs or the Department should NOR be permitted to intervene.
3 Plaintiffs the original Complaint on January 4, 2019, so this case is only a few weeks old.
4 So far, no progress has been made in the case, and the Department has yet to respond to
5 the Complaint. There is simply no prejudice to any of the existing parties at this early
6 stage in the case, and there will be no delay resulting from NOR's intervention.

7 In contrast, NOR would be significantly prejudiced if it cannot intervene in this
8 matter. NOR holds seven unique and valuable conditional licenses. The nature of the
9 relief sought by Plaintiffs is an attempt to undermine the rights of NOR and other
10 successful applicants. Plaintiffs have challenged both the process employed by the
11 Department in evaluating applications as well as validity of the conditional licenses
12 issued by the Department to successful applicants like NOR. Accordingly, this Motion is
13 timely.

14 Second, NOR has an interest in the subject matter of the action. While "no 'bright-
15 line' test to determine an alleged interest's sufficiency exists," (see *American Home*
16 *Assurance Corp.*, 122 Nev. at 1238 n.29, 147 P.3d at 1126 (noting that "federal decisions
17 involving the federal civil procedure rules are persuasive authority" and citing *Southern*
18 *California Edison Co. v. Lynch*, 307 F.3d 794, 803 (9th Cir. 2002)), an applicant must show a
19 "significantly protectable interest." *Id.* at 1239 n.31 (citing *Donaldson v. United States*, 400
20 U.S. 517, 542 (1971), superseded in part by statute, as stated in *Ip v. U.S.*, 205 F.3d 1168,
21 1172 (9th Cir. 2000), and cited in *Sierra Club v. EPA*, 995 F.2d 1478, 1482 (9th Cir. 1993)). A
22 significantly protectable interest is one that "is protected under the law and bears a
23 relationship to the plaintiff's claims." *Id.* at 1239 n.32 (citing *Lynch*, 307 F.3d at 803 and
24 *Sierra Club*, 995 F.2d at 1482-84. Accordingly, a "prospective intervenor 'has a sufficient
25 interest for intervention purposes if it will suffer a practical impairment of its interests as
26 a result of the pending litigation.'" *Wilderness Soc'y*, 630 F.3d at 1179 (quoting *California*
27 *ex rel. Lockyer v. United States*, 450 F.3d 436, 441 (9th Cir. 2006)). The types of interests
28

1 protected are interpreted “broadly, in favor of the applicants for intervention.” *Sierra*
2 *Club v. EPA*, 995 F.2d 1478, 1481 (9th Cir. 1993) (quoting *Scotts Valley Band of Pomo*
3 *Indians of the Sugar Bowl Rancheria v. United States*, 921 F.2d 924, 926 (9th Cir. 1990)).

4 Here, NOR has a significantly protectable legal interest in the conditional licenses
5 issued by the Department of Taxation. Marijuana establishment licenses are governed
6 and protected by NRS Chapter 453D and R092-17, and it is clear that NOR’s conditional
7 licenses could suffer a practical impairment as a result of the disposition of this case
8 given the relief sought by Plaintiffs. Accordingly, NOR has shown an interest in the
9 subject matter of this action.

10 Third, NOR’s interest may be impaired by the disposition of this case. A
11 significantly protectable interest is very closely linked with the third requirement for
12 intervention as a matter of right – that the outcome of the challenge may impair the
13 proposed intervenor’s interest. Indeed, once a proposed intervenor has shown a
14 significantly protectable interest, courts should have “little difficulty concluding that the
15 disposition of [the] case may, as a practical matter, affect” the intervenor.” *Citizens for*
16 *Balanced Use v. Montana Wilderness Assoc.*, 647 F.3d 893, 898 (9th Cir. 2011).

17 Here, NOR, through the Department’s evaluation process conducted pursuant to
18 NRS Chapter 453D and R092-17, was awarded conditional licenses in seven (7) separate
19 jurisdictions. Plaintiffs have asked this Court to effectively void the entire application
20 evaluation process employed by the Department and to award Plaintiffs a license in each
21 jurisdiction for which they submitted an application. This relief, if granted, would
22 necessarily harm at least one or more of the applicants who ranked higher than Plaintiffs
23 in each jurisdiction where they applied, and NOR holds provisional licenses in five of
24 those jurisdictions. The relief requested in Plaintiffs’ FAC presents a classic “zero sum
25 game” scenario, where if Plaintiffs were awarded a license in a given jurisdiction
26 through this case, a previously successful applicant in that jurisdiction would have to
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1 lose its license. Accordingly, NOR's interests may be impaired by the disposition of this
2 case.

3 Finally, NOR's interest is not adequately represented by an existing party. A
4 proposed intervenor can establish this factor if it "shows that representation of [its]
5 interest 'may be' inadequate," and the "burden of making that showing should be
6 treated as minimal." *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972).
7 Indeed, a proposed intervenor "should be treated as the best judge of whether the
8 existing parties adequately represent . . . [its] interests, and . . . any doubt regarding
9 adequacy of representation should be resolved in [its] favor." 6 Edward J. Brunet,
10 Moore's Federal Practice § 24.03[4][a] (3d ed. 1997).

11 Here, while the Department will presumably defend its application evaluation
12 process by showing that it complied with NRS Chapter 453D and R092-17 throughout
13 that process, the Department will not defend each of NOR's unique and valuable
14 licenses. If the application evaluation process conducted by the Department and
15 resulting ranked list of applicants are called into question, then NOR will need to defend
16 its applications against all other applicants, including Plaintiffs. The Department simply
17 has no interest in specifically defending NOR's licenses versus other applicants, nor is
18 the Department equipped to do so. Accordingly, NOR has met its minimal burden of
19 showing that its interests are not adequately represented.

20 ///

21 ///

22 ///

CONCLUSION

For the reasons set forth above, NOR respectfully requests that this Court enter an Order allowing NOR to intervene in this action as a Defendant and allowing NOR to file the [Proposed] Answer attached hereto.

KOCH & SCOW, LLC

By: /s/ David R. Koch
David R. Koch, Esq.
Steven B. Scow, Esq.
Brody R. Wight, Esq.
Daniel G. Scow, Esq.
11500 S. Eastern Ave., Suite 210
Henderson, Nevada 89052
Attorneys for Intervenor
Nevada Organic Remedies

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. I certify that on January 25, 2019, I caused the foregoing document entitled: **MOTION TO INTERVENE** to be served as follows:

- ☒ Pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; and/or;
- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Henderson, Nevada; and/or
- ☐ Pursuant to EDCR 7.26, to be sent via facsimile; and/or
- ☐ hand-delivered to the attorney(s) listed below at the address indicated below;
- ☐ to be delivered overnight via an overnight delivery service in lieu of delivery by mail to the addressee (s); and or:
- ☐ by electronic mailing to:

MGA Docketing docket@mgalaw.com
ShaLinda Creer screer@gcmaslaw.com

Executed on January 25, 2019 at Henderson, Nevada.

/s/ David R. Koch
David R. Koch

EXHIBIT 1

EXHIBIT 1

1 **DECL**

2 David R. Koch (NV Bar #8830)
3 Steven B. Scow (NV Bar #9906)
4 Brody R. Wight (NV Bar #13615)
5 Daniel G. Scow (NV Bar #14614)
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13 *Attorneys for Intervenor*
14 *Nevada Organic Remedies*

15 **EIGHTH JUDICIAL DISTRICT COURT**
16 **CLARK COUNTY, NEVADA**

17 SERENITY WELLNESS CENTER, LLC, a
18 Nevada limited liability company, TGIG, LLC,
19 a Nevada limited liability company, NULEAF
20 INCLINE DISPENSARY, LLC, a Nevada
21 limited liability company, NEVADA
22 HOLISTIC MEDICINE, LLC, a Nevada limited
23 liability company, TRYKE COMPANIES SO
24 NV, LLC, a Nevada limited liability company,
25 TRYKE COMPANIES RENO, LLC, a Nevada
26 limited liability company, PARADISE
27 WELLNESS CENTER, LLC, a Nevada limited
28 liability company, GBS NEVADA PARTNERS,
LLC, a Nevada limited liability company,
FIDELIS HOLDINGS, LLC, a Nevada limited
liability company, GRAVITAS NEVADA, LLC,
a Nevada limited liability company, NEVADA
PURE, LLC, a Nevada limited liability
company, MEDIFARM, LLC a Nevada limited
liability company, DOE PLAINTIFFS I through
X; and ROE ENTITY PLAINTIFFS I through X,

Case No. A-19-786962-B

Dept. No. 11

Plaintiffs,

vs.

STATE OF NEVADA, DEPARTMENT OF
TAXATION,

Defendant;

1 NEVADA ORGANIC REMEDIES, LLC
2
3 Applicant for Intervention

4 **DECLARATION OF ANDREW JOLLEY**

5 I, Andrew Jolley, pursuant to NRS 53.045, declare and state as follows:

6 1. I am a founder of and corporate officer for Nevada Organic Remedies ("NOR"). I
7 have personal knowledge of the information below and am competent to testify as to the same if
8 called upon by this Court. I make this Declaration in support of NOR's Motion to Intervene in
9 the above-captioned case.

10 2. On August 16, 2018, the Nevada Department of Taxation ("Department") issued
11 notice for an application period within which the Department sought applications from qualified
12 applicants for sixty-four (64) recreational marijuana retail store licenses throughout various
13 jurisdictions in Nevada.

14 3. The application period for those licenses opened on September 7, 2018 and closed
15 on September 20, 2018.

16 4. The Department allocated ten (10) licenses for Unincorporated Clark County,
17 Nevada, ten (10) licenses for Las Vegas, Nevada; six (6) licenses for Henderson, Nevada; five
18 (5) licenses for North Las Vegas, Nevada; six (6) licenses for Reno, Nevada; one (1) license for
19 Sparks, Nevada; and one (1) license for Nye County, Nevada.

20 5. The Department indicated that it would issue conditional licenses to successful
21 applicants on or before December 5, 2018.

22 6. NOR submitted applications for eight (8) recreational marijuana retail store
23 licenses during the September 2018 application period in the following Nevada jurisdictions:
24 Unincorporated Clark County, City of Las Vegas, City of North Las Vegas, City of Henderson,
25 City of Reno, Nye County, Carson City and City of Sparks.

26 7. On December 5, 2018, the Department sent letters to NOR indicating that the
27 Department intended to conditionally approve NOR's applications for licenses in Unincorporated
28

1 Clark County, City of Las Vegas, City of North Las Vegas, City of Henderson, City of Reno,
2 Carson City and Nye County.

3 8. I am informed and believe that the Department received numerous applications
4 for licenses in each of the jurisdictions in which NOR applied, which triggered the Department's
5 obligations to rank all applications within each such jurisdiction from first to last based on
6 compliance with NRS 453D and the Adopted Regulation of the Department of Taxation, LCB
7 File No. R092-17 ("R092-17").

8 9. I am further informed and believe that the Department, after ranking the
9 applications, issued licenses to the highest-ranked applicants in each jurisdiction until the
10 Department had issued the maximum number of licenses authorized for issuance in that
11 jurisdiction.

12 10. I am informed and believe that the Department issued NOR seven conditional
13 licenses because NOR scored second highest among overall applicants in six jurisdictions, and
14 had the highest score for any applicant in Nye County.

15 I declare under penalty of perjury under the law of the State of Nevada that the foregoing
16 is true and correct.

17 DATED this 7 day of January, 2019.

18
19 
20 ANDREW JOLLEY

EXHIBIT 2

EXHIBIT 2

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13 Nevada Organic Remedies, LLC

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**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

SERENITY WELLNESS CENTER, LLC, a
Nevada limited liability company, TGIG, LLC,
a Nevada limited liability company, NULEAF
INCLINE DISPENSARY, LLC, a Nevada
limited liability company, NEVADA
HOLISTIC MEDICINE, LLC, a Nevada limited
liability company, TRYKE COMPANIES SO
NV, LLC, a Nevada limited liability company,
TRYKE COMPANIES RENO, LLC, a Nevada
limited liability company, PARADISE
WELLNESS CENTER, LLC, a Nevada limited
liability company, GBS NEVADA PARTNERS,
LLC, a Nevada limited liability company,
FIDELIS HOLDINGS, LLC, a Nevada limited
liability company, GRAVITAS NEVADA, LLC,
a Nevada limited liability company, NEVADA
PURE, LLC, a Nevada limited liability
company, MEDIFARM, LLC a Nevada limited
liability company, DOE PLAINTIFFS I through
X; and ROE ENTITY PLAINTIFFS I through X,

Plaintiffs,

vs.

STATE OF NEVADA, DEPARTMENT OF
TAXATION,

Defendant;

Case No. A-19-786962-B
Dept. No. 11

**ANSWER TO PLAINTIFFS'
COMPLAINT**

1 NEVADA ORGANIC REMEDIES, LLC
2 Applicant for Intervention
3

4 Nevada Organic Remedies, (collectively "NOR"), by and through its attorneys of
5 record, Koch & Scow, LLC file their answer to Plaintiffs' Complaint as follows:

6 **I.**

7 **PARTIES & JURISDICTION**

8 1. NOR does not have sufficient knowledge or information as to the truth or
9 falsity of the allegations contained in paragraphs 1 through 14 of the Complaint and on
10 that basis denies these allegations

11 2. The allegations contained in paragraph 15 of the Complaint contain legal
12 conclusions, and no response is necessary.

13 **II.**

14 **GENERAL ALLEGATIONS**

15 3. In response to paragraphs 16 through 21 of the Complaint, NOR admits that
16 the statutes and regulations mentioned in the paragraphs have been enacted. As to the
17 content of the statutes and regulations, the documents speak for themselves, and no
18 response is necessary.

19 4. NOR admits the allegations contained in paragraphs 22 and 23 of the
20 Complaint.

21 5. In response to paragraphs 24 through 26 of the Complaint, the referenced
22 application speaks for itself and no response is necessary.

23 6. NOR denies the allegations contained in paragraph 27 of the Complaint.

24 7. NOR admits the allegations contained in paragraphs 28 and 29 of the
25 Complaint.

26 8. NOR does not have sufficient knowledge or information as to the truth or
27 falsity of the allegations contained in paragraphs 30 through 32 of the Complaint and on
28 that basis denies these allegations.

9. NOR denies the allegations contained in paragraphs 33 through 35 of the

1 Complaint.

2 III.

3 CLAIMS FOR RELIEF

4 FIRST CLAIM FOR RELIEF
5 (Violation of Civil Rights)

6 (Due Process: Deprivation of Property)

7 (U.S. Const., Amendment XIV; Nev. Const., Art. 1, Sec. 1, 8; Title 42 U.S.C. § 1983)

8 10. In response to paragraph 36 of the Complaint, NOR repeats and reasserts all
9 prior responses as though fully set forth herein.

10 11. Paragraphs 37 through 54 of the Complaint contain legal conclusions, and
11 no response is necessary. Insomuch as the allegations do not contain legal conclusions,
12 NOR denies the allegations.

13 12. NOR denies the allegations contained in paragraph 55 of the Complaint.

14 13. In response to paragraph 56 of the Complaint, NOR admits that the
15 Department will not suffer harm by following the law but does not admit or agree with
16 Plaintiffs' interpretation of the law.

17 14. Paragraph 57 of the Complaint contains legal conclusions, and no response
18 is necessary.

19 15. NOR denies the allegations in paragraph 58 of the Complaint.

20 16. Paragraphs 59 through 61 of the Complaint contain legal conclusions, and
21 no response is necessary. Insomuch as the allegations do not contain legal conclusions,
22 NOR denies the allegations.

23
24 SECOND CLAIM FOR RELIEF
25 (Violation of Civil Rights)

26 (Due Process: Deprivation of Liberty)

27 (U.S. Const., Amendment XIV; Nev. Const., Art. 1, Sec. 1, 8; Title 42 U.S.C. § 1983)

28 17. In response to paragraph 62 of the Complaint, NOR repeats and reasserts all

1 prior responses as though fully set forth herein.

2 18. Paragraphs 63 through 69 of the Complaint contain legal conclusions, and
3 no response is necessary. Inasmuch as the allegations do not contain legal conclusions,
4 NOR denies the allegations.

5
6 **THIRD CLAIM FOR RELIEF**
(Violation of Civil Rights)

7 **(Equal Protection)**

8 **(U.S. Const., Amendment XIV; Nev. Const., Art. 1, Sec. 1, 8; Title 42 U.S.C. § 1983)**
9

10 19. In response to paragraph 70 of the Complaint, NOR repeats and reasserts all
11 prior responses as though fully set forth herein.

12 20. Paragraphs 71 through 74 of the Complaint contain legal conclusions, and
13 no response is necessary. Inasmuch as the allegations do not contain legal conclusions,
14 NOR denies the allegations.

15 **FOURTH CLAIM FOR RELIEF**

16 **(Petition for Judicial Review)**
17

18 21. In response to paragraph 75 of the Complaint, NOR repeats and reasserts all
19 prior responses as though fully set forth herein.

20 22. Paragraphs 76 through 80 of the Complaint contain legal conclusions, and
21 no response is necessary. Inasmuch as the allegations do not contain legal conclusions,
22 NOR denies the allegations.

23 **FIFTH CLAIM FOR RELIEF**
24 **(Petition for Writ of Mandamus)**

25
26 23. In response to paragraph 81 of the Complaint, NOR repeats and reasserts all
27 prior responses as though fully set forth herein.

28 24. Paragraphs 82 through 86 of the Complaint contain legal conclusions, and
no response is necessary. Inasmuch as the allegations do not contain legal conclusions,

1 NOR denies the allegations.

2 **GENERAL DENIAL**

3 To the extent a further response is required to any allegation set forth in the
4 Complaint, NOR denies such allegation.

5 **AFFIRMATIVE DEFENSES**

6 **AFFIRMATIVE DEFENSE NO. 1**

7 The Complaint and each claim for relief fails to state a claim upon which relief
8 can be granted.

9 **AFFIRMATIVE DEFENSE NO. 2**

10 The actions of Defendants the State of Nevada and Nevada Department of
11 Taxation were all official acts that were done in compliance with applicable laws and
12 regulations.

13 **AFFIRMATIVE DEFENSE NO. 3**

14 Plaintiff's claims are barred because Plaintiff has failed to exhaust administrative
15 remedies.

16 **AFFIRMATIVE DEFENSE NO. 4**

17 Plaintiff has failed to join necessary and indispensable parties to this litigation
18 under NRCP 19 as the Court cannot grant any of Plaintiffs' claims without affecting the
19 rights and privileges of those parties who received the licenses at issue as well as other
20 third parties.

21 **AFFIRMATIVE DEFENSE NO. 5**

22 The actions of Defendants the State of Nevada and Nevada Department of
23 Taxation were not arbitrary or capricious, and Defendants had a rational basis for all of
24 the actions taken in the licensing process at issue.

25 **AFFIRMATIVE DEFENSE NO. 6**

26 Because this case is in its infancy, NOR has not yet discovered all relevant facts.
27 Additional facts may support the assertion of additional affirmative defenses, including,
28

1 but not limited to, those enumerated in NRCP 8(c). NOR reserves the right to assert such
2 affirmative defenses as discovery proceeds.

3 **AFFIRMATIVE DEFENSE NO. 7**

4 It has been necessary for Defendant to employ the services of an attorney to
5 defend this action and a reasonable sum should be allowed Defendant as and for
6 attorneys' fees, together with its costs expended in this action.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Defendant prays for judgment as follows:

- 9 1. That Plaintiffs take nothing by way of its Complaint and that the same be
10 dismissed with prejudice;
11 2. For costs of suit and reasonable attorneys' fees; and
12 3. For any other such relief as this Court deems just and proper under the
13 circumstances.

14
15 DATED: January 25, 2019

KOCH & SCOW, LLC

16 By: /s/ David R. Koch
17 David R. Koch, Esq.
18 *Attorneys for Intervenor*
19 *Nevada Organic Remedies*
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EXHIBIT 3

EXHIBIT 3

1 David R. Koch (NV Bar #8830)
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9
10
11 **EIGHTH JUDICIAL DISTRICT COURT**
CLARK COUNTY, NEVADA

12
13 SERENITY WELLNESS CENTER, LLC, a
Nevada limited liability company, TGIG, LLC,
14 a Nevada limited liability company, NULEAF
INCLINE DISPENSARY, LLC, a Nevada
15 limited liability company, NEVADA
HOLISTIC MEDICINE, LLC, a Nevada limited
16 liability company, TRYKE COMPANIES SO
NV, LLC, a Nevada limited liability company,
17 TRYKE COMPANIES RENO, LLC, a Nevada
limited liability company, PARADISE
18 WELLNESS CENTER, LLC, a Nevada limited
liability company, GBS NEVADA PARTNERS,
19 LLC, a Nevada limited liability company,
FIDELIS HOLDINGS, LLC, a Nevada limited
20 liability company, GRAVITAS NEVADA, LLC,
a Nevada limited liability company, NEVADA
21 PURE, LLC, a Nevada limited liability
company, MEDIFARM, LLC a Nevada limited
22 liability company, DOE PLAINTIFFS I through
23 X; and ROE ENTITY PLAINTIFFS I through X,

24 Plaintiffs,

25 vs.

26 STATE OF NEVADA, DEPARTMENT OF
TAXATION,

27 Defendant;
28

Case No. A-19-786962-B
Dept. No. 11

**ORDER GRANTING MOTION TO
INTERVENE**

1 NEVADA ORGANIC REMEDIES, LLC

2 Applicant for Intervention

3
4 The Court, having reviewed the Intervenor's Emergency Motion to Intervene, and
5 good cause appearing,

6 IT IS HEREBY ORDERED:

7 Intervenor's Motion to Intervene is granted, and Nevada Organic Remedies shall
8 intervene as a Defendant in the above-captioned case as a necessary party to the action
9 pursuant to NRCP 24 and NRS 12.130. The proposed answer attached to the Motion to
10 Intervene as exhibit 2 shall be filed in this case.

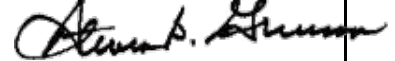
11 DATED this _____ day of _____, 2019.

12
13 _____
DISTRICT COURT JUDGE

14
15 *Respectfully submitted by:*
KOCH & SCOW LLC

16 
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17 Steven B. Scow (NV Bar #9906)
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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

ETW MANAGEMENT GROUP LLC, a
Nevada limited liability company; GLOBAL
HARMONY LLC, a Nevada limited liability
company; GREEN LEAF FARMS
HOLDINGS LLC, a Nevada limited liability
company; GREEN THERAPEUTICS LLC, a
Nevada limited liability company; HERBAL
CHOICE INC., a Nevada corporation; JUST
QUALITY, LLC, a Nevada limited liability
company; LIBRA WELLNESS CENTER,
LLC, a Nevada limited liability company;
ROMBOUGH REAL ESTATE INC. dba
MOTHER HERB, a Nevada corporation;
NEVCANN LLC, a Nevada limited liability
company; RED EARTH LLC, a Nevada
limited liability company; THC NEVADA
LLC, a Nevada limited liability company; and
ZION GARDENS LLC, a Nevada limited
liability company,

Plaintiffs,

v.

STATE OF NEVADA, DEPARTMENT OF
TAXATION, a Nevada administrative agency;
DOES 1 through 20, inclusive; and ROE
CORPORATIONS 1 through 20, inclusive,

Defendants.

CASE NO.: A-19-787004-B

DEPT NO.: XI

**ERRATA TO FIRST AMENDED
COMPLAINT**

1 Plaintiffs ETW MANAGEMENT GROUP LLC (“ETW”), GLOBAL HARMONY LLC
2 (“Global Harmony”), GREEN LEAF FARMS HOLDINGS LLC (“GLFH”), GREEN
3 THERAPEUTICS LLC (“GT”), HERBAL CHOICE INC. (“Herbal Choice”), JUST QUALITY,
4 LLC (“Just Quality”), LIBRA WELLNESS CENTER, LLC (“Libra”), ROMBOUGH REAL
5 ESTATE INC. dba MOTHER HERB (“Mother Herb”), NEVCANN LLC (“NEVCANN”), RED
6 EARTH LLC (“Red Earth”), THC NEVADA LLC (“THCNV”), and ZION GARDENS LLC
7 (“Zion”) (collectively, the “Plaintiffs”), by and through their undersigned counsel of record Adam
8 K. Bult, Esq. and Travis F. Chance, Esq., of the law firm of Brownstein Hyatt Farber Schreck,
9 LLP, and Adam R. Fulton, Esq., of the law firm of Jennings & Fulton, Ltd., hereby submits this
10 Errata to its First Amended Complaint.

11 Due to clerical error, Plaintiff inadvertently filed the First Amended Complaint with
12 Gregory A. Brower, Esq. included in the caption. See the corrected First Amended Complaint
13 attached hereto as Exhibit “1”.

14 DATED this 21st day of February, 2019.

15 BROWNSTEIN HYATT FARBER SCHRECK, LLP

16 /s/ Adam K. Bult

17 ADAM K. BULT, ESQ., Nevada Bar No. 9332

18 TRAVIS F. CHANCE, ESQ., Nevada Bar No. 13800

19 JENNINGS & FULTON, LTD.

20 ADAM R. FULTON, Esq., Nevada Bar No. 11572

21 *Attorneys for Plaintiffs*
22
23
24
25
26
27
28

EXHIBIT 1

ACOM

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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

ETW MANAGEMENT GROUP LLC, a
Nevada limited liability company; GLOBAL
HARMONY LLC, a Nevada limited liability
company; GREEN LEAF FARMS
HOLDINGS LLC, a Nevada limited liability
company; GREEN THERAPEUTICS LLC, a
Nevada limited liability company; HERBAL
CHOICE INC., a Nevada corporation; JUST
QUALITY, LLC, a Nevada limited liability
company; LIBRA WELLNESS CENTER,
LLC, a Nevada limited liability company;
ROMBOUGH REAL ESTATE INC. dba
MOTHER HERB, a Nevada corporation;
NEVCANN LLC, a Nevada limited liability
company; RED EARTH LLC, a Nevada
limited liability company; THC NEVADA
LLC, a Nevada limited liability company; and
ZION GARDENS LLC, a Nevada limited
liability company,

Plaintiffs,

v.

STATE OF NEVADA, DEPARTMENT OF
TAXATION, a Nevada administrative agency;
DOES 1 through 20, inclusive; and ROE
CORPORATIONS 1 through 20, inclusive,

CASE NO.: A-19-787004-B
DEPT NO.: XI

AMENDED COMPLAINT

(Exempt From Arbitration Pursuant to
N.A.R. 3(A): Action Seeks Damages in
Excess of \$50,000 and Action Seeks
Equitable or Extraordinary Relief)

Defendants.

Plaintiffs ETW MANAGEMENT GROUP LLC ("ETW"), GLOBAL HARMONY LLC ("Global Harmony"), GREEN LEAF FARMS HOLDINGS LLC ("GLFH"), GREEN THERAPEUTICS LLC ("GT"), HERBAL CHOICE INC. ("Herbal Choice"), JUST QUALITY, LLC ("Just Quality"), LIBRA WELLNESS CENTER, LLC ("Libra"), ROMBOUGH REAL ESTATE INC. dba MOTHER HERB ("Mother Herb"), NEVCANN LLC ("NEVCANN"), RED EARTH LLC ("Red Earth"), THC NEVADA LLC ("THCNV"), and ZION GARDENS LLC ("Zion") (collectively, the "Plaintiffs"), by and through their undersigned counsel of record Adam K. Bult, Esq. and Travis F. Chance, Esq., of the law firm of Brownstein Hyatt Farber Schreck, LLP, and Adam R. Fulton, Esq., of the law firm of Jennings & Fulton, Ltd., hereby file their Amended Complaint against the STATE OF NEVADA, DEPARTMENT OF TAXATION (the "DOT"), DOES 1 through 20 inclusive, and ROE CORPORATIONS 1 through 20, inclusive, alleging and complaining as follows:

PARTIES

1. At all times relevant hereto, ETW is and was a limited liability company organized and existing under the laws of the State of Nevada and authorized to do business in Clark County, Nevada.

2. At all times relevant hereto, Global Harmony is and was a limited liability company organized and existing under the laws of the State of Nevada and authorized to do business in Clark County, Nevada.

3. At all times relevant hereto, GLFH is and was a limited liability company organized and existing under the laws of the State of Nevada and authorized to do business in Clark County, Nevada.

4. At all times relevant hereto, GT is and was a limited liability company organized and existing under the laws of the State of Nevada and authorized to do business in Clark County, Nevada.

5. At all times relevant hereto, Herbal Choice is and was a Nevada corporation

1 authorized to do business in Clark County, Nevada.

2 6. At all times relevant hereto, Just Quality is and was a limited liability company
3 organized and existing under the laws of the State of Nevada and authorized to do business in
4 Clark County, Nevada.

5 7. At all times relevant hereto, Libra is and was a limited liability company organized
6 and existing under the laws of the State of Nevada and authorized to do business in Clark County,
7 Nevada.

8 8. At all times relevant hereto, Mother Herb is and was a Nevada corporation and
9 authorized to do business in Clark County, Nevada.

10 9. At all times relevant hereto, NEVCANN is and was a limited liability company
11 organized and existing under the laws of the State of Nevada and authorized to do business in
12 Clark County, Nevada.

13 10. At all times relevant hereto, Red Earth is and was a limited liability company
14 organized and existing under the laws of the State of Nevada and authorized to do business in
15 Clark County, Nevada.

16 11. At all times relevant hereto, THCNV is and was a limited liability company
17 organized and existing under the laws of the State of Nevada and authorized to do business in
18 Clark County, Nevada.

19 12. At all times relevant hereto, Zion is and was a limited liability company organized
20 and existing under the laws of the State of Nevada and authorized to do business in Clark County,
21 Nevada.

22 13. At all times relevant hereto, the DOT is and was an agency and political
23 subdivision of the State of Nevada.

24 14. The true names and capacities, whether individual, corporate, associate or
25 otherwise, of Defendants Does 1-20, inclusive, and Roe Corporations 1-20, inclusive, are
26 unknown to Plaintiffs, which therefore sue said Defendants by such fictitious names. Plaintiffs
27 will amend this Amended Complaint to state the true names and capacities of said fictitious
28 Defendants when they have been ascertained.

1 Plaintiffs are informed and believe, and thereon allege, that each of the fictitiously named
2 Defendants are responsible in some manner for the occurrences herein alleged, and that Plaintiffs'
3 damages as herein alleged were proximately caused by Defendants' acts. Each reference in this
4 Complaint to "Defendant" or "Defendants," or a specifically named Defendant refers also to all
5 Defendants sued under fictitious names.

6 JURISDICTION AND VENUE

7 15. Jurisdiction is proper in this Court pursuant to the Nevada Constitution, Article 6,
8 § 6, NRS 4.370(2), NRS 30, and because the acts and omissions complained of herein occurred
9 and caused harm within Clark County, Nevada. Further, the amount in controversy exceeds
10 \$15,000.00.

11 16. Venue is proper in this Court pursuant to NRS 13.020(2)-(3).

12 GENERAL ALLEGATIONS

13 17. Plaintiffs incorporate and reallege Paragraphs 1 through 16 as though fully set
14 forth herein.

15 *The Statutory Scheme Governing Retail Marijuana Licenses*

16 18. In or around November 2016, the citizens of the State of Nevada approved a
17 statutory ballot initiative that, *inter alia*, legalized the recreational use of marijuana and allowed
18 for the licensing of recreational marijuana dispensaries.

19 19. The statutory scheme approved by the voters was codified in NRS Chapter 453D
20 and vested authority for the issuance of licenses for retail marijuana dispensaries in the DOT.

21 20. NRS 453D.200(1) required the DOT to "adopt all regulations necessary or
22 convenient to carry out the provisions of" that Chapter, including procedures for the issuance of
23 retail marijuana licenses, no later than January 1, 2018.

24 21. NRS 453D.210(d)(1) limits the number of retail marijuana licenses in Clark
25 County to a total of 80.

26 22. However, NRS 453D.210(d)(5) provides that Clark County may request that the
27 DOT issue retail marijuana licenses above the limit set forth in NRS 453D.210(d)(5).

28 23. As mandated by NRS 453D.210(6), "[w]hen competing applications are submitted

1 for a proposed retail marijuana store within a single county, the Department shall use an
2 impartial and numerically scored competitive bidding process to determine which application
3 or applications among those competing will be approved.”

4 *The DOT's Adoption of Flawed Regulations that Do Not Comply with Chapter 453D*

5 24. On or around May 8, 2017, the DOT adopted temporary regulations pertaining to,
6 *inter alia*, the application for and the issuance of retail marijuana licenses.

7 25. The DOT continued preparing draft permanent regulations as required by NRS
8 453D.200(1) and held public workshops with respect to the same on July 24 and July 25, 2017.

9 26. On or around December 16, 2017, the DOT issued a Notice of Intent to Adopt
10 permanent regulations pursuant to the mandates of NRS 453D.200(1).

11 27. On or around January 16, 2018, the DOT held a public hearing on the proposed
12 permanent regulations (LCB File No. R092-17), which was attended by numerous members of
13 the public and marijuana business industry.

14 28. At the hearing, the DOT was informed that the licensure factors contained in the
15 proposed permanent regulations would have the effect of favoring vertically-integrated
16 cultivators/dispensaries and would result in arbitrary weight being placed upon certain
17 applications that were submitted by well-known, well-connected, and longtime Nevada families.

18 29. Despite the issues raised at the hearing, on or around January 16, 2018, the DOT
19 adopted the proposed permanent regulations in LCB File No. R092-17 (the “Regulations”). A true
20 and correct copy of the Regulations is attached hereto as **Exhibit 1**.¹

21 30. Section 80 of the Regulations relates to the DOT’s method of evaluating
22 competing retail marijuana license applications.

23 31. Section 80(1) of the Regulations provides that where the DOT receives competing
24 applications, it will “rank the applications...in order from first to last based on compliance with
25 the provisions of this chapter and chapter 453D of NRS and on the content of the applications
26 relating to” several enumerated factors.

27 _____
28 ¹ The Regulations have been adopted but have yet to be codified in the Nevada Administrative Code.

1 32. The factors set forth in Section 80(1) of the Regulations that are used to rank
2 competing applications (collectively, the “Factors”) are:

- 3 a. Whether the owners, officers or board members have experience operating
4 another kind of business that has given them experience which is
5 applicable to the operation of a marijuana establishment;
6 b. The diversity of the owners, officers or board members of the proposed
7 marijuana establishment;
8 c. The educational achievements of the owners, officers or board members of
9 the proposed marijuana establishment;
10 d. The financial plan and resources of the applicant, both liquid and illiquid;
11 e. Whether the applicant has an adequate integrated plan for the care, quality
12 and safekeeping of marijuana from seed to sale;
13 f. The amount of taxes paid and other beneficial financial contributions,
14 including, without limitation, civic or philanthropic involvement with this
15 State or its political subdivisions, by the applicant or the owners, officers or
16 board members of the proposed marijuana establishment;
17 g. Whether the owners, officers or board members of the proposed marijuana
18 establishment have direct experience with the operation of a medical
19 marijuana establishment or marijuana establishment in this State and have
20 demonstrated a record of operating such an establishment in compliance
21 with the laws and regulations of this State for an adequate period of time to
22 demonstrate success;
23 h. The experience of key personnel that the applicant intends to employ in
24 operating the type of marijuana establishment for which the applicant seeks
25 a license; and
26 i. Any other criteria that the DOT determines to be relevant.

27 33. Aside from the Factors, there is no other competitive bidding process used by the
28 DOT to evaluate competing applications.

1 34. Section 80(5) of the Regulations provides that the DOT will not issue more than
2 one retail marijuana license to the same person, group of persons, or entity.

3 35. NRS 453D.210(4)(b) and Section 91(4) of the Regulations requires the DOT to
4 provide the specific reasons that any license application is rejected.

5 ***Plaintiffs Receive Arbitrary Denials of their Applications for Retail Marijuana Licenses***

6 36. NRS 453D.210 required the DOT to accept applications and issue licenses only to
7 medical marijuana establishments for 18 months following the date upon which the DOT began
8 to receive applications for recreational dispensaries (the "Early Start Program").

9 37. Upon information and belief, the DOT began to accept applications for
10 recreational dispensary licenses on or around May 15, 2017.

11 38. Beginning upon the expiration of the Early Start Program (or on or around
12 November 15, 2018), the DOT was to receive and consider applications for a recreational
13 dispensary license from any qualified applicant.

14 39. The DOT released the application package for non-Early Start Program applicants
15 on July 6, 2018 and required those applications to be returned in complete form between
16 September 7 and September 20, 2018. A true and correct copy of the application package is
17 attached hereto as **Exhibit 2**.

18 40. Each of the Plaintiffs submitted an Application for issuance of a retail marijuana
19 license after the expiration of the Early Start Program during the period specified by the DOT and
20 some Plaintiffs submitted multiple Applications for different localities that contained the same
21 substantive information.

22 41. Each and every Application submitted by Plaintiffs was full, complete, and
23 contained substantive information and data for each and every factor outlined in the application
24 form.

25 42. Some of the information requested by the form application was "identified," such
26 that the reviewer would know the identity of the applicant when scoring the same, while some
27 was unidentified, such that the reviewer would not know the identity of the applicant.

28 43. On or around December 5, 2018, each of the Plaintiffs' Applications was denied

1 by identical written notices issued by the DOT.

2 44. Each of the written notices from the DOT does not contain any specific reasons
3 why the Applications were denied and instead states merely that “NRS 453D.210 limits the total
4 number of licenses that can be issued in each local jurisdiction. This applicant was not issued a
5 conditional license because it did not achieve a score high enough to receive an available
6 license...” Upon information and belief, the DOT utilized the Factors in evaluating each of the
7 Applications, assigning a numerical score to each Factor, but the Factors are partial and arbitrary
8 on their face.

9 45. In addition, the DOT’s review and scoring of each of the Plaintiffs’ Applications
10 was done errantly, arbitrarily, irrationally, and partially because, *inter alia*:

- 11 a. The Applications were complete but received zero scores for some Factors
12 and the only way to receive a zero score is to fail to submit information
13 with respect to that Factor;
- 14 b. The scoring method used by the DOT combined certain Factors into one
15 grouping, effectively omitting certain Factors from consideration;
- 16 c. Plaintiffs that submitted multiple Applications containing the same
17 substantive information and data for different localities received widely
18 different scores for certain Factors; and
- 19 d. The Plaintiffs received much higher scores for the unidentified data and
20 information when compared with the identified data and information
21 submitted.

22 46. Moreover, the highest scored Factor was the organizational structure of the
23 application and the DOT required that Plaintiffs disclose information about the identities of “key
24 personnel” with respect to that Factor, resulting in arbitrary and partial weight being placed upon
25 applications from well-known and well-connected applicants.

26 47. Upon information and belief, the DOT improperly engaged Manpower US Inc.
27 (“Manpower”) to provide temporary personnel for the review and scoring of submitted license
28 Applications without providing them with any uniform method of review to ensure consistency

1 and impartiality, which further contributed to the arbitrary and partial scoring of Plaintiff's
2 Applications.

3 48. Upon information and belief, the DOT issued multiple licenses to the same entity
4 or group of persons to the exclusion of other applicants, including Plaintiffs, in violation of the
5 DOT's own Regulations.

6 **FIRST CLAIM FOR RELIEF**

7 **Violation of Substantive Due Process**

8 49. Plaintiffs incorporate and reallege Paragraphs 1 through 48 as though fully set
9 forth herein.

10 50. The Fourteenth Amendment to the United States Constitution provides that "no
11 state [may] deprive any person of life, liberty, or property, without due process of law."

12 51. Similarly, Article 1, Section 8 of the Nevada Constitution provides that "[n]o
13 person shall be deprived of life, liberty, or property, without due process of law."

14 52. Plaintiffs are persons within the meaning of the United States and Nevada
15 Constitutions' guarantees of due process.

16 53. Retail marijuana licenses constitute protectable property interests under the
17 Nevada and United States Constitutions.

18 54. The denials of Plaintiffs' Applications were based upon the Factors.

19 55. The Factors are arbitrary, irrational, and lack impartiality on their face.

20 56. As a result of the DOT's use of the Factors in denying Plaintiffs' Applications,
21 Plaintiffs have been deprived of their fundamental property rights in violation of the substantive
22 due process guarantees of the Nevada and United States Constitutions.

23 57. In addition, the Factors violate due process as applied to Plaintiffs' Applications
24 because, *inter alia*:

25 a. The Applications were complete but received zero scores for some Factors
26 and the only way to receive a zero score is to fail to submit information
27 with respect to that Factor;

28 b. The scoring method used by the DOT combined certain Factors into one

grouping, effectively omitting certain Factors from consideration;

- c. Plaintiffs that submitted multiple Applications containing the same substantive information and data for different localities received widely different scores for certain Factors;
- d. The Plaintiffs received much higher scores for the unidentified data and information when compared with the identified data and information submitted;
- e. The DOT placed improper weight upon other applications simply because they were submitted by well-known and well-connected persons; and
- f. The DOT improperly utilized Manpower temporary workers who had little to no experience in retail marijuana licensure to review the Applications and failed to provide those persons with a uniform system of review to ensure consistency and impartiality in the scoring process.

58. As a result of the DOT's arbitrary, irrational, and partial application of the Factors to Plaintiffs' applications, Plaintiffs have been deprived of their fundamental property rights in violation of the substantive due process guarantees of the Nevada and United States Constitutions, as applied.

59. As a direct and proximate result of the DOT's constitutional violations, as set forth hereinabove, Plaintiffs have sustained damages in an amount in excess of \$15,000.00.

60. Plaintiffs have been forced to retain counsel to prosecute this action and are thus entitled to an award of attorneys' fees and costs as provided by applicable law.

SECOND CLAIM FOR RELIEF

Violation of Procedural Due Process

61. Plaintiffs incorporate and reallege Paragraphs 1 through 60 as though fully set forth herein.

62. The Fourteenth Amendment to the United States Constitution provides that "no state [may] deprive any person of life, liberty, or property, without due process of law."

63. Similarly, Article 1, Section 8 of the Nevada Constitution provides that "[n]o

1 person shall be deprived of life, liberty, or property, without due process of law.”

2 64. Plaintiffs are persons within the meaning of the United States and Nevada
3 Constitutions’ guarantees of due process.

4 65. Retail marijuana licenses constitute protectable property interests under the
5 Nevada and United States Constitutions.

6 66. NRS 453D, in conjunction with the Regulations, govern the application for and the
7 issuance of retail marijuana licenses within the State of Nevada.

8 67. Under those provisions, the DOT denied Plaintiffs’ Applications for a retail
9 marijuana license without notice or a hearing.

10 68. The denial notices sent by the DOT did not comply with NRS 453D210(4)(b) or
11 procedural due process because they do not specify the substantive reasons that Plaintiffs’
12 Applications were denied.

13 69. Neither NRS 453D nor the Regulations provide for a mechanism through which
14 Plaintiffs may have their Applications fully and finally determined, either before or after denial of
15 the same.

16 70. As a result of the denial of Plaintiffs’ Applications without notice or a hearing,
17 Plaintiffs have been denied their right to procedural due process guaranteed by the Nevada and
18 United States Constitutions.

19 71. As a direct and proximate result of the DOT’s constitutional violations, as set forth
20 hereinabove, Plaintiffs have sustained damages in an amount in excess of \$15,000.00.

21 72. Plaintiffs have been forced to retain counsel to prosecute this action and are thus
22 entitled to an award of attorneys’ fees and costs as provided by applicable law.

23 **THIRD CLAIM FOR RELIEF**

24 **Violation of Equal Protection**

25 73. Plaintiffs incorporate and reallege Paragraphs 1 through 72 as though fully set
26 forth herein.

27 74. The Fourteenth Amendment to the United States Constitution provides that no
28 “state [may]...deny to any person within its jurisdiction the equal protection of the laws.”

1 75. Similarly, Article 4, Section 21 of the Nevada Constitution requires that all laws be
2 “general and of uniform operation throughout the State.”

3 76. Plaintiffs are persons within the meaning of the Nevada and United States
4 Constitutions’ guarantees of equal protection.

5 77. Plaintiffs have a fundamental right to engage in a profession or business, including
6 that of retail marijuana establishments.

7 78. The DOT utilized the Factors when evaluating Plaintiffs’ Applications.

8 79. The Factors violate equal protection on their face because they contain arbitrary,
9 partial, and unreasonable classifications that bear no rational relationship to a legitimate
10 governmental interest.

11 80. The Factors further violate equal protection on their face because they contain
12 arbitrary, partial, and unreasonable classifications that are not narrowly tailored to the
13 advancement of any compelling interest.

14 81. In addition, the application of the Factors to Plaintiffs’ Applications violates equal
15 protection because it was arbitrary, partial and unreasonable, bearing no rational relationship to a
16 legitimate governmental interest and/or failing to be narrowly tailored to any compelling
17 government interest, to wit:

- 18 a. The Applications were complete but received zero scores for some Factors
19 and the only way to receive a zero score is to fail to submit information
20 with respect to that Factor;
- 21 b. The scoring method used by the DOT combined certain Factors into one
22 grouping, effectively omitting certain Factors from consideration;
- 23 c. Plaintiffs that submitted multiple Applications containing the same
24 substantive information and data for different localities received widely
25 different scores for certain Factors;
- 26 d. The Plaintiffs received much higher scores for the unidentified data and
27 information when compared with the identified data and information
28 submitted;

e. The DOT placed improper weight upon other applications simply because they were submitted by well-known and well-connected persons; and

f. The DOT improperly utilized Manpower temporary workers who had little to no experience in retail marijuana licensure to review the Applications and failed to provide those persons with a uniform system of review to ensure consistency and impartiality in the scoring process.

82. As a result of the DOT's actions as set forth herein, Plaintiffs' rights to equal protection of the law were violated.

83. As a direct and proximate result of the DOT's constitutional violations, as set forth hereinabove, Plaintiffs have sustained damages in an amount in excess of \$15,000.00.

84. Plaintiffs have been forced to retain counsel to prosecute this action and are thus entitled to an award of attorneys' fees and costs as provided by applicable law.

FOURTH CLAIM FOR RELIEF

Declaratory Judgment

85. Plaintiffs incorporate and reallege Paragraphs 1 through 84 as though fully set forth herein.

86. Under NRS 30.010, *et seq.*, the Uniform Declaratory Judgment Act, any person whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

87. The DOT enacted the Regulations, including the Factors and Section 80(5) of the Regulations, pursuant to NRS 453D.200 and NRS 453D.210(6).

88. NRS 453D.210(6) requires that the Factors be "an impartial and numerically scored competitive bidding process."

89. Plaintiffs contend that the DOT violated NRS 453D.210(6) because the Factors are not impartial and are instead partial, arbitrary, and discretionary, in contravention of NRS 453D.210(6).

1 90. Plaintiffs further contend that the DOT applied the Factors to their Applications in
2 an arbitrary and partial manner, including because:

- 3 a. The Applications were complete but received zero scores for some Factors
4 and the only way to receive a zero score is to fail to submit information
5 with respect to that Factor;
- 6 b. The scoring method used by the DOT combined certain Factors into one
7 grouping, effectively omitting certain Factors from consideration;
- 8 c. Plaintiffs that submitted multiple Applications containing the same
9 substantive information and data for different localities received widely
10 different scores for certain Factors;
- 11 d. The Plaintiffs received much higher scores for the unidentified data and
12 information when compared with the identified data and information
13 submitted;
- 14 e. The DOT placed improper weight upon other applications simply because
15 they were submitted by well-known and well-connected persons; and
- 16 f. The DOT improperly utilized Manpower temporary workers who had little
17 to no experience in retail marijuana licensure to review the Applications
18 and failed to provide those persons with a uniform system of review to
19 ensure consistency and impartiality in the scoring process.

20 91. Plaintiffs further contend that the DOT violated NRS 453D.210(6) because the
21 Factor evaluation procedure is not a competitive bidding process, as required by NRS
22 453D.210(6).

23 92. Plaintiffs further contend that the DOT violated Section 80(5) of the Regulations
24 because multiple retail marijuana licenses were issued to the same entity or group of persons.

25 93. Plaintiffs further contend that the denial notices sent by the DOT failed to comply
26 with NRS 453D.210(4)(b) because they do not give the specific substantive reasons for the denial
27 of Plaintiffs' Applications.

28 94. The DOT contends that that Factors are compliant with NRS 453D.210(6), that all

1 applications it approved were done so in a valid manner, and that the denial notices complied with
2 NRS 453D.210(4)(b).

3 95. The foregoing issues are ripe for judicial determination because there is a
4 substantial controversy between parties having adverse legal interests of sufficient immediacy and
5 reality to warrant the issuance of a declaratory judgment.

6 96. Accordingly, Plaintiffs request a declaratory judgment from this Court that: (1) the
7 Factors do not comply with NRS 453D.210(6) because they are not impartial or a competitive
8 bidding process; (2) the DOT applied the Factors to Plaintiffs' Applications in a wholly arbitrary
9 and irrational manner; (3) the DOT violated Section 80(5) of the Regulations by issuing multiple
10 retail marijuana licenses to the same entity or group of persons; and (4) the denial notices did not
11 comply with NRS 453D.210(4)(b).

12 Plaintiffs have been forced to retain counsel to prosecute this action and are thus entitled to an
13 award of attorneys' fees and costs as provided by applicable law.

14 **WHEREFORE**, Plaintiffs pray for relief from this Court as follows:

- 15 1. For an award of compensatory damages in an amount to be determined at
16 trial for the DOT's violation of Plaintiffs' substantive due process rights, as
17 set forth herein;
- 18 2. For an award of compensatory damages in an amount to be determined at
19 trial for the DOT's violation of Plaintiffs' procedural due process rights, as
20 set forth herein;
- 21 3. For an award of compensatory damages in an amount to be determined at
22 trial for the DOT's violation of Plaintiffs' rights to equal protection of the
23 law, as set forth herein;
- 24 4. For relief in the form of a judgment from this Court that: (1) the Factors do
25 not comply with NRS 453D.210(6) because they are not impartial or a
26 competitive bidding process; (2) the DOT applied the Factors to Plaintiffs'
27 Applications in a wholly arbitrary and irrational manner; (3) the DOT
28 violated Section 80(5) of the Regulations by issuing multiple retail

marijuana licenses to the same entity or group of persons; and (4) the denial notices did not comply with NRS 453D.210(4)(b);

5. For an award of attorneys' fees and costs in bringing the instant action as provided by applicable law; and
6. For any additional relief this Court deems just and proper.

DATED this 21st day of February, 2019.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

/s/ Adam K. Bult

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EXHIBIT 1

SECRETARY OF STATE
FILING DATA

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2018 FEB 27 PM2:30



Form For Filing
Administrative Regulations

Agency: Department of Taxation

Permanent Regulation
LCB File No. R092-17

FOR EMERGENCY
REGULATIONS ONLY

Effective date _____

Expiration date _____

Governor's signature

Classification: ADOPTED BY AGENCY

Brief description of action: The Nevada Tax Commission adopted LCB File No. R092-17 to establish procedures for the issuance, suspension or revocation of licenses issued by the department of Taxation, provide operating requirements to licensed marijuana establishments, require monthly filing of returns and remittance of tax imposed on the sales of marijuana, require the maintenance of certain records, and provide for the inspection of such records relating to the regulation and taxation of marijuana pursuant to NRS 453D and other matters properly relating thereto.

Authority citation other than 233B: N/A

Notice date: December 16, 2017

Date of Adoption by Agency: January 16, 2018

Hearing date: January 16, 2018

AA 000447

**APPROVED REGULATION OF THE
DEPARTMENT OF TAXATION**

LCB File No. R092-17

Effective February 27, 2018

EXPLANATION – Matter in *italics* is new; matter in brackets ~~(omitted material)~~ is material to be omitted.

AUTHORITY: §§1-21, NRS 453A.370, as amended by section 47 of Assembly Bill No. 422, chapter 540, Statutes of Nevada 2017, at page 3706 and section 48 of Senate Bill No. 487, chapter 541, Statutes of Nevada 2017, at page 3759; §§22-76, 79-81, 83-101, 103-234 and 236-246, NRS 453D.200; §§77, 78, 82 and 102, NRS 453D.200 and 453D.230; §235, NRS 372A.290, as amended by section 9 of Senate Bill No. 487, chapter 541, Statutes of Nevada 2017, at page 3730, and 453D.200.

A REGULATION relating to marijuana; revising requirements relating to independent testing laboratories; providing for the licensing of marijuana establishments and registration of marijuana establishment agents; providing requirements concerning the operation of marijuana establishments; providing additional requirements concerning the operation of marijuana cultivation facilities, marijuana distributors, marijuana product manufacturing facilities, marijuana testing facilities and retail marijuana stores; providing standards for the packaging and labeling of marijuana and marijuana products; providing requirements relating to the production of edible marijuana products and other marijuana products; providing standards for the cultivation and production of marijuana; establishing requirements relating to advertising by marijuana establishments; establishing provisions relating to the collection of excise taxes from marijuana establishments; establishing provisions relating to dual licensees; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the Department of Taxation to adopt all regulations necessary or convenient to carry out the provisions of chapter 453D of NRS, which exempts a person who is 21 years of age or older from state or local prosecution for possession, use, consumption, purchase, transportation or cultivation of certain amounts of marijuana and requires the Department to begin receiving applications for the licensing of marijuana establishments on or before January 1, 2018.

--1--

Approved Regulation R092-17

AA 000448

Sections 74-102 of this regulation provide for the licensing of marijuana establishments and the registration of marijuana establishment agents. **Section 76** of this regulation requires the Department to determine at least annually whether additional marijuana establishments are necessary to serve the people of this State and, if so, to issue a request for applications. **Sections 77 and 78** of this regulation establish the information that must be submitted with an application for a license for a marijuana establishment. **Sections 77-80** of this regulation establish the procedure for the Department to determine which applicants receive such a license. **Sections 83, 85 and 86** of this regulation prohibit a marijuana establishment from operating without a license and provide for inspections and investigations of marijuana establishments by the Department. **Sections 87 and 88** of this regulation provide for the surrender of a license in certain circumstances. **Section 89** of this regulation provides for the renewal of a license. **Section 94** of this regulation provides for the issuance and renewal of marijuana establishment agent registration cards. **Section 95** of this regulation establishes the categories of marijuana establishment agent registration cards and the requirements for the various categories. **Sections 94 and 102** of this regulation establish various fees relating to licenses and marijuana establishment agent registration cards.

Sections 103-143 of this regulation establish various provisions that apply to all marijuana establishments. **Section 104** of this regulation prohibits a marijuana establishment from selling a lot of usable marijuana or marijuana products until all testing has been completed. **Section 105** of this regulation restricts the persons who may be present at a marijuana establishment. **Sections 108 and 109** of this regulation provide requirements relating to inventory control for marijuana establishments. **Section 111** of this regulation provides requirements relating to the security of a marijuana establishment. **Sections 119-143** of this regulation establish the grounds for disciplinary action and civil penalties against a marijuana establishment and establish a process for hearings.

Sections 144-153 of this regulation provide additional requirements for the operation of retail marijuana stores. **Section 145** of this regulation provides the procedures that a marijuana establishment agent must complete before selling marijuana or marijuana products. **Sections 150-153** of this regulation establish requirements for the delivery of marijuana or marijuana products by a retail marijuana store. **Sections 154-157** of this regulation provide additional requirements for the operation of marijuana cultivation facilities. **Sections 158-179** of this regulation provide additional requirements for the production of marijuana products. **Sections 180-194** of this regulation provide the minimum good manufacturing practices for the cultivation and preparation of marijuana and marijuana products. **Sections 195-210** of this regulation provide additional requirements for the operation of marijuana testing facilities. **Sections 1-21** of this regulation revise existing requirements for independent testing laboratories to correspond with requirements for marijuana testing facilities. **Sections 211-218** of this regulation provide additional requirements for the operation of marijuana distributors. **Sections 219-229** of this regulation provide requirements for the packaging and labeling of marijuana products. **Sections 230 and 231** of this regulation provide requirements for the use of a name, logo, sign, advertisement or packaging by a marijuana establishment. **Sections 232-235** of this regulation

establish provisions relating to the collection and reporting of excise taxes by marijuana establishments. Sections 236-246 of this regulation establish various other provisions relating to marijuana. Section 237 of this regulation establishes the maximum quantity of marijuana and marijuana products that a person who does not hold a registry identification card or letter of approval authorizing the person to engage in the medical use of marijuana may possess at one time. Section 238 of this regulation allows for the Department to limit the amount of marijuana being cultivated within this State. Sections 241 and 242 of this regulation provide for the confidentiality of certain information. Sections 245 and 246 of this regulation establish requirements for the co-location of marijuana establishments and medical marijuana establishments and for the operation of marijuana establishments and medical marijuana establishments by a dual licensee.

Section 1. Chapter 453A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 13, inclusive, of this regulation.

Sec. 2. *“Analyte” means any compound, element, contaminant organism, species or other substance for which a marijuana sample is tested by an independent testing laboratory.*

Sec. 3. *“CBD” means cannabidiol, which is a primary phytocannabinoid compound found in marijuana.*

Sec. 4. *“Proficiency testing” means the evaluation, relative to a given set of criteria, of the performance, under controlled conditions, of an independent testing laboratory in analyzing unknown samples provided by an external source.*

Sec. 5. *“Proficiency testing program” means the program established by the Department pursuant to NAC 453A.660 to evaluate the proficiency of all independent testing laboratories in this State.*

Sec. 6. *“Proficiency testing provider” means a person accredited to operate a proficiency testing program by an organization which is accredited pursuant to standard ISO/IEC 17011 of the International Organization for Standardization to perform such accreditation.*

Sec. 7. “Proficiency testing sample” means a sample, the composition of which is unknown to the independent testing laboratory, provided to an independent testing laboratory to test whether the independent testing laboratory can produce analytical results within certain criteria.

Sec. 8. “Sampling protocols” means the procedures specified by the Department which are required to be used to obtain samples of marijuana for quality assurance testing.

Sec. 9. 1. When performing potency analysis or terpene analysis pursuant to NAC 453A.654, an independent testing laboratory shall test for and quantify the presence of the following:

(a) Cannabinoids:

- (1) THC;**
- (2) Tetrahydrocannabinolic acid;**
- (3) CBD;**
- (4) Cannabidiolic acid; and**
- (5) Cannabinol; and**

(b) Terpenoids:

- (1) Alpha-bisabolol;**
- (2) Alpha-humulene;**
- (3) Alpha-pinene;**
- (4) Alpha-terpinolene;**
- (5) Beta-caryophyllene;**
- (6) Beta-myrcene;**

- (7) Beta-pinene;*
- (8) Caryophyllene oxide;*
- (9) Limonene; and*
- (10) Linalool.*

2. An independent testing laboratory shall provide the final certificate of analysis containing the results of testing pursuant to this section to the medical marijuana establishment which provided the sample within 2 business days after obtaining the results.

Sec. 10. *1. Except as otherwise provided in subsection 2, an independent testing laboratory shall perform testing to verify the homogeneity of the potency of an edible marijuana product by testing multiple samples from a single production run.*

2. An independent testing laboratory that tests an edible marijuana product which has previously had the homogeneity of the potency of the edible marijuana product verified by an independent testing laboratory and which has not undergone a change in recipe may verify the homogeneity of the edible marijuana product by testing one or more single units or servings from a production run of the edible marijuana product.

3. The independent testing laboratory will verify the homogeneity of the potency of the edible marijuana product only if:

(a) The concentration of THC and weight of each sample is within 15 percent above or below the intended concentration of THC and weight; and

(b) No combination of samples which comprise 10 percent or less of the edible marijuana product contain 20 percent or more of the total THC in the edible marijuana product.

Sec. 11. 1. *A medical marijuana establishment shall only use a pesticide in the cultivation or production of marijuana, edible marijuana products or marijuana-infused products if the pesticide appears on the list of pesticides published by the State Department of Agriculture pursuant to NRS 586.550.*

2. *When performing pesticide residue analysis pursuant to NAC 453A.654, an independent testing laboratory shall analyze for the pesticides which occur on the list of pesticides published by the State Department of Agriculture pursuant to NRS 586.550 at the detection levels specified by the State Department of Agriculture and for any other substances required by the Department of Taxation. If:*

(a) A pesticide which occurs on the list of pesticides published by the State Department of Agriculture pursuant to NRS 586.550 is detected at a level which exceeds the level specified by the State Department of Agriculture; or

(b) A pesticide which does not occur on the list of pesticides published by the State Department of Agriculture pursuant to NRS 586.550 is detected in any amount which is positively verified,

↪ the pesticide residue analysis is failed.

Sec. 12. 1. *At the request of the Department of Taxation, an independent testing laboratory may be audited or certified by the State Department of Agriculture.*

2. *If the State Department of Agriculture audits or certifies independent testing laboratories, the State Department of Agriculture will perform such technical inspections of the premises and operations of an independent testing laboratory as the State Department of Agriculture determines is appropriate.*

3. If the State Department of Agriculture audits or certifies independent testing laboratories, each independent testing laboratory shall comply with the requirements established by the State Department of Agriculture.

Sec. 13. *1. At the request of the Department of Taxation, the State Department of Agriculture may collect and test random samples from medical marijuana establishments and compare the results of its testing to the results reported by independent testing laboratories.*

2. A medical marijuana establishment shall provide samples to the State Department of Agriculture upon request if the State Department of Agriculture conducts testing pursuant to subsection 1.

Sec. 14. NAC 453A.010 is hereby amended to read as follows:

453A.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 453A.020 to 453A.078, inclusive, *and sections 2 to 8, inclusive, of this regulation* have the meanings ascribed to them in those sections.

Sec. 15. NAC 453A.650 is hereby amended to read as follows:

453A.650 **1.** Each independent testing laboratory must employ a scientific director who must be responsible for:

- (a) Ensuring that the laboratory achieves and maintains quality standards of practice; and
- (b) Supervising all staff of the laboratory.

2. The scientific director of an independent testing laboratory must have earned:

- (a) A doctorate degree in ~~{chemical or biological sciences}~~ *science* from an accredited college or university and have at least 2 years of post-degree laboratory experience;

(b) A master's degree in ~~[chemical or biological sciences]~~ *science* from an accredited college or university and have at least 4 years of post-degree laboratory experience; or

(c) A bachelor's degree in ~~[chemical or biological sciences]~~ *science* from an accredited college or university and have at least 6 years of post-degree laboratory experience.

3. *If a scientific director is no longer employed by an independent testing laboratory, the independent testing laboratory shall not be permitted to conduct any testing.*

4. *Upon the appointment of a new scientific director by an independent testing laboratory, the independent testing laboratory shall not resume any testing until the Department conducts an inspection of the independent testing laboratory.*

Sec. 16. NAC 453A.652 is hereby amended to read as follows:

453A.652 1. Each independent testing laboratory must:

(a) Follow the most current version of the *Cannabis Inflorescence: Standards of Identity, Analysis, and Quality Control* monograph published by the American Herbal Pharmacopoeia . ~~or~~

(b) ~~[Notify the Division of the alternative testing methodology the laboratory is following for each quality assurance test it conducts. The Division may require the independent testing laboratory to have the testing methodology followed pursuant to this paragraph validated by an independent third party to ensure that the methodology followed by the laboratory produces scientifically accurate results before the laboratory may use the methodology when conducting testing services.]~~ *Follow the Recommendations for Regulators -- Cannabis Operations published by the American Herbal Products Association.*

(c) Be accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization by an impartial organization that operates in conformance with standard ISO/IEC 17011 of the International Organization for Standardization and is a signatory to the Mutual Recognition Arrangement of the International Laboratory Accreditation Cooperation.

(d) Follow the Guidelines for Laboratories Performing Microbiological and Chemical Analyses of Food, Dietary Supplements, and Pharmaceuticals -- An Aid to the Interpretation of ISO/IEC 17025:2005 (2015) published by AOAC International.

2. Each independent testing laboratory shall become proficient in testing samples using the analytical methods approved by the ~~{Division}~~ *Department* within 6 months after the date upon which the independent testing laboratory is issued a medical marijuana establishment registration certificate.

3. The ~~{Division}~~ *Department* may require an independent testing laboratory to have its basic proficiency to execute correctly the analytical testing methodologies used by the laboratory validated and monitored on an ongoing basis by an independent third-party.

4. Each independent testing laboratory shall:

(a) ~~{Either:~~

~~——(1)}~~ Adopt and follow minimum good laboratory practices which must, at a minimum, satisfy the *OECD Series on Principles of Good Laboratory Practice (GLP) and Compliance Monitoring* published by the Organisation for Economic Co-operation and Development . ~~{or~~

~~——(2)}~~ (b) Become certified by the International Organization for Standardization and agree to have the inspections and reports of the International Organization for Standardization made available to the ~~{Division.~~

~~—(b)(1)~~ *Department.*

(c) Maintain internal standard operating procedures.

~~{(c)}~~ (d) Maintain a quality control and quality assurance program.

5. The ~~{Division}~~ *Department* or an independent third-party authorized by the ~~{Division}~~ *Department* may conduct an inspection of the practices, procedures and programs adopted, followed and maintained pursuant to subsection 4 and inspect all records of the independent testing laboratory that are related to the inspection.

6. *An independent testing laboratory must use, when available, testing methods that have undergone validation by the Official Methods of Analysis of AOAC International, the Performance Tested Methods Program of the Research Institute of AOAC International, the Bacteriological Analytical Manual of the Food and Drug Administration, the International Organization for Standardization, the United States Pharmacopeia, the Microbiology Laboratory Guidebook of the Food Safety and Inspection Service of the United States Department of Agriculture or an equivalent third-party validation study approved by the Department of Taxation. If no such testing method is available, an independent testing laboratory may use an alternative testing method or a testing method developed by the independent testing laboratory upon demonstrating the validity of the testing method to and receiving the approval of the *Department*.*

7. The ~~{Division}~~ *Department* hereby adopts by reference:

(a) *The Cannabis Inflorescence: Standards of Identity, Analysis, and Quality Control* monograph published by the American Herbal Pharmacopoeia. A copy of that publication may

be obtained from the American Herbal Pharmacopoeia, P.O. Box 66809, Scotts Valley, California 95067, or at the Internet address <http://www.herbal-ahp.org/>, for the price of \$44.95.

(b) The *OECD Series on Principles of Good Laboratory Practice (GLP) and Compliance Monitoring* published by the Organisation for Economic Co-operation and Development. A copy of that publication may be obtained free of charge from the Organisation for Economic Co-operation and Development at the Internet address <http://www.oecd.org/env/ehs/testing/oecdseriesonprinciplesofgoodlaboratorypracticeglpandcompliancemonitoring.htm>.

(c) *Standard ISO/IEC 17025 published by the International Organization for Standardization. A copy of that publication may be obtained from the American National Standards Institute at the Internet address <https://webstore.ansi.org/RecordDetail.aspx?sku=ISO%2fIEC+17025%3a2005> for the price of \$162.*

(d) *The Guidelines for Laboratories Performing Microbiological and Chemical Analyses of Food, Dietary Supplements, and Pharmaceuticals -- An Aid to the Interpretation of ISO/IEC 17025:2005 (2015)* published by AOAC International. A copy of that publication may be obtained from AOAC International at the Internet address http://www.aoc.org/aoc_prod_imis/AOAC/AOAC_Member/PUBSCF/ALACCCF/ALACC_M.aspx for the price of \$190.

Sec. 17. NAC 453A.654 is hereby amended to read as follows:

453A.654 1. Each independent testing laboratory must use the *sampling protocols and the* general body of required quality assurance tests for usable marijuana, as received, concentrated

cannabis, marijuana-infused products and edible marijuana products set forth in this section. Such tests may include moisture content, potency analysis, foreign matter inspection, microbial screening, pesticide and other chemical residue and metals screening and residual solvents levels. An independent testing laboratory may request additional sample material for the purposes of completing required quality assurance tests ~~(H)~~ *but may not use such material for the purposes of resampling or repeating quality assurance tests.* An independent testing laboratory may retrieve samples from the premises of another medical marijuana establishment and transport the samples directly to the laboratory. *An independent testing laboratory transporting samples may make multiple stops if:*

(a) Each stop is for the sole purpose of retrieving a sample from a medical marijuana establishment; and

(b) All samples remain secured at all times.

2. The tests required pursuant to subsection 1 by an independent testing laboratory are as follows:

Product	Tests Required	
Usable marijuana (H) <i>and crude collected resins</i> , as received, excluding wet marijuana	1. Moisture content 2. Potency analysis 3. Terpene analysis 4. Foreign matter inspection	<i>1. < 15%</i> <i>2. N/A</i> <i>3. N/A</i> <i>4. None detected</i>

Product	Tests Required	
	<p>5. [Microbial screening</p> <p>6.] Mycotoxin screening</p> <p>[7.] 6. Heavy metal screening</p> <p>[8.] 7. Pesticide residue analysis</p> <p>[9.] 8. Herbicide screening</p> <p>[10.] 9. Growth regulator screening</p> <p>10. Total yeast and mold</p> <p>11. Total Enterobacteriaceae</p> <p>12. Salmonella</p> <p>13. Pathogenic E. coli</p> <p>14. Aspergillus fumigatus</p> <p>15. Aspergillus flavus</p> <p>16. Aspergillus terreus</p> <p>17. Aspergillus niger</p> <p>18. Total coliform</p>	<p>5. < 20 µg/kg for the total of Aflatoxins B1, B2, G1 and G2 combined and < 20 µg/kg for Ochratoxin A</p> <p>6. Arsenic: < 2 ppm</p> <p>Cadmium: < 0.82 ppm</p> <p>Lead: < 1.2 ppm</p> <p>Mercury: < 0.4 ppm</p> <p>7. See section 11 of this regulation</p> <p>8. See section 11 of this regulation</p> <p>9. See section 11 of this regulation</p> <p>10. < 10,000 colony forming units per gram</p> <p>11. < 1,000 colony forming units per gram</p>

Product	Tests Required	
		<p><i>12. None detected per gram</i></p> <p><i>13. None detected per gram</i></p> <p><i>14. None detected per gram</i></p> <p><i>15. None detected per gram</i></p> <p><i>16. None detected per gram</i></p> <p><i>17. None detected per gram</i></p> <p><i>18. < 1,000 colony forming units per gram</i></p>
Wet marijuana, as received, which is destined for extraction	<p>1. Potency analysis</p> <p>2. Terpene analysis</p> <p>3. Foreign matter inspection</p> <p>4. Microbial screening</p> <p>5.1 Mycotoxin screening</p>	<p><i>1. N/A</i></p> <p><i>2. N/A</i></p> <p><i>3. None detected</i></p> <p><i>4. < 20 µg/kg for the total of Aflatoxins B1, B2, G1</i></p>

Product	Tests Required	
	[6.] 5. Heavy metal screening [7.] 6. Pesticide residue analysis [8.] 7. Herbicide screening [9.] 8. Growth regulator screening 9. Total yeast and mold 10. Total Enterobacteriaceae 11. Salmonella 12. Pathogenic E. coli 13. Aspergillus fumigatus 14. Aspergillus flavus 15. Aspergillus terreus 16. Aspergillus niger 17. Total coliform	and G2 combined and < 20 µg/kg for Ochratoxin A 5. Arsenic: < 2 ppm Cadmium: < 0.82 ppm Lead: < 1.2 ppm Mercury: < 0.4 ppm 6. See section 11 of this regulation 7. See section 11 of this regulation 8. See section 11 of this regulation 9. < 10,000 colony forming units per gram 10. < 1,000 colony forming units per gram 11. None detected per gram

Product	Tests Required	
		<p>12. <i>None detected per gram</i></p> <p>13. <i>None detected per gram</i></p> <p>14. <i>None detected per gram</i></p> <p>15. <i>None detected per gram</i></p> <p>16. <i>None detected per gram</i></p> <p>17. <i>< 1,000 colony forming units per gram</i></p>
<p>Extract of marijuana (nonsolvent) like kief, hashish, bubble hash, infused dairy butter, <i>mixtures of extracted products</i> or oils or fats derived from natural sources, including concentrated cannabis extracted with CO₂</p>	<p>1. Potency analysis</p> <p>2. Foreign matter inspection</p> <p>3. Microbial screening</p> <p>4. Terpenes analysis</p> <p>4. <i>Mycotoxin screening</i></p> <p>5. <i>Heavy metal screening</i></p> <p>6. <i>Pesticide residue analysis</i></p>	<p>1. <i>N/A</i></p> <p>2. <i>None detected</i></p> <p>3. <i>N/A</i></p> <p>4. <i>< 20 µg/kg for the total of Aflatoxins B1, B2, G1 and G2 combined and < 20 µg/kg for Ochratoxin</i></p>

Product	Tests Required	
	<p>7. Total yeast and mold</p> <p>8. Total Enterobacteriaceae</p> <p>9. Salmonella</p> <p>10. Pathogenic E. coli</p> <p>11. Aspergillus fumigatus</p> <p>12. Aspergillus flavus</p> <p>13. Aspergillus terreus</p> <p>14. Aspergillus niger</p>	<p>A</p> <p>5. Arsenic: < 2 ppm</p> <p>Cadmium: < 0.82 ppm</p> <p>Lead: < 1.2 ppm</p> <p>Mercury: < 0.4 ppm</p> <p>6. See section 11 of this regulation</p> <p>7. < 1,000 colony forming units per gram</p> <p>8. < 100 colony forming units per gram</p> <p>9. None detected per gram</p> <p>10. None detected per gram</p> <p>11. None detected per gram</p> <p>12. None detected per gram</p>

Product	Tests Required	
		<p><i>13. None detected per gram</i></p> <p><i>14. None detected per gram</i></p>
Extract of marijuana (solvent-based) made with any approved solvent, including concentrated cannabis extracted by means other than with CO ₂	<p>1. Potency analysis</p> <p>2. Terpene analysis</p> <p>3. Foreign matter inspection</p> <p>4. Microbial screening</p> <p>5.] Residual solvent test</p> <p>5. Mycotoxin screening</p> <p>6. Heavy metal screening</p> <p>7. Pesticide residue analysis</p> <p>8. Total yeast and mold</p> <p>9. Total Enterobacteriaceae</p> <p>10. Salmonella</p> <p>11. Pathogenic E. coli</p> <p>12. Aspergillus fumigatus</p> <p>13. Aspergillus flavus</p> <p>14. Aspergillus terreus</p>	<p><i>1. N/A</i></p> <p><i>2. N/A</i></p> <p><i>3. None detected</i></p> <p><i>4. < 500 ppm</i></p> <p><i>5. < 20 µg/kg for the total of Aflatoxins B1, B2, G1 and G2 combined and < 20 µg/kg for Ochratoxin A</i></p> <p><i>6. Arsenic: < 2 ppm</i></p> <p><i>Cadmium: < 0.82 ppm</i></p> <p><i>Lead: < 1.2 ppm</i></p> <p><i>Mercury: < 0.4 ppm</i></p> <p><i>7. See section 11 of this regulation</i></p>

Product	Tests Required	
	<i>15. Aspergillus niger</i>	<i>8. < 1,000 colony forming units per gram</i> <i>9. < 100 colony forming units per gram</i> <i>10. None detected per gram</i> <i>11. None detected per gram</i> <i>12. None detected per gram</i> <i>13. None detected per gram</i> <i>14. None detected per gram</i> <i>15. None detected per gram</i>

Product	Tests Required	
Edible marijuana-infused product, including a product which contains concentrated cannabis	1. Potency analysis 2. Terpene analysis 3. Foreign matter inspection 4. Microbial screening Total <i>Enterobacteriaceae</i> 5. <i>Salmonella</i> 6. <i>Pathogenic E. coli</i> 7. Total aerobic count 8. Water activity or pH	1. <i>N/A</i> 2. <i>N/A</i> 3. <i>None detected</i> 4. <i>< 1,000 colony forming units per gram</i> 5. <i>None detected per gram</i> 6. <i>None detected per gram</i> 7. <i>< 100,000 colony forming units per gram</i> 8. <i>Water activity < 0.86 or pH < 4.6</i>

Product	Tests Required	
Liquid marijuana-infused product, including, without limitation, soda or tonic, including a product which contains concentrated cannabis	1. Potency analysis 2. Terpene analysis 3. Foreign matter inspection 4. Microbial screening Total <i>Enterobacteriaceae</i> 5. <i>Salmonella</i> 6. <i>Pathogenic E. coli</i> 7. Total aerobic count 8. Water activity or pH	1. N/A 2. N/A 3. None detected 4. < 1,000 colony forming units per gram 5. None detected per gram 6. None detected per gram 7. < 100,000 colony forming units per gram 8. Water activity < 0.86 or pH < 4.6
Topical marijuana-infused product, including a product which contains concentrated cannabis	1. Potency analysis 2. Terpene analysis	1. N/A 2. N/A

3. *A sample of usable marijuana must be at least 10 grams. A sample of a production run must be the lesser of 1 percent of the total product weight of the production run or 25 units of product. All samples must be homogenized before testing.*

4. A medical marijuana establishment shall not submit wet marijuana to an independent testing laboratory for testing unless the wet marijuana is destined for extraction ~~[-~~
~~—4.]~~ *and weighed within 2 hours after harvest.*

5. As used in this section, “as received” means the unaltered state in which a sample was collected, without any processing or conditioning, which accounts for all mass, including moisture content.

Sec. 18. NAC 453A.656 is hereby amended to read as follows:

453A.656 *1.* An independent testing laboratory shall not handle, test or analyze marijuana unless:

~~[(1)]~~ (a) The laboratory has been issued a medical marijuana establishment registration certificate;

~~[(2)]~~ (b) The laboratory is independent from all other persons involved in the medical marijuana industry in Nevada; and

~~[(3)]~~ (c) No person with a direct or indirect interest in the laboratory has a direct or indirect financial interest in:

~~[(a)]~~ (1) A medical marijuana dispensary;

~~[(b)]~~ (2) A facility for the production of edible marijuana products or marijuana-infused products;

~~[(c)]~~ (3) A cultivation facility;

~~{(d)}~~ (4) A ~~{physician}~~ *provider of health care* who provides or has provided written documentation for the issuance of registry identification cards or letters of approval; or

~~{(e)}~~ (5) Any other entity that may benefit from the cultivation, manufacture, dispensing, sale, purchase or use of marijuana or marijuana products.

2. An independent testing laboratory is not required to use a marijuana distributor to collect or move samples for testing.

Sec. 19. NAC 453A.658 is hereby amended to read as follows:

453A.658 1. Immediately before packaging:

(a) Raw marijuana for sale to a medical marijuana dispensary, facility for the production of edible marijuana products or marijuana-infused products or another cultivation facility, a cultivation facility shall segregate all harvested marijuana into homogenized lots of flower and trim, respectively and allow an independent testing laboratory to select a representative sample for testing from each lot the cultivation facility has segregated. The independent testing laboratory which performs the test must collect the samples. *If the cultivation facility has segregated the lot of harvested marijuana into packages or container sizes smaller than the entire lot, the independent testing laboratory must sample and test each package containing harvested marijuana from the lot.*

(b) Concentrated cannabis, edible marijuana products or marijuana-infused products, a facility for the production of edible marijuana products or marijuana-infused products shall allow an independent testing laboratory to select a random sample from each lot or production run for testing by the independent testing laboratory. The independent testing laboratory performing the testing must collect the samples.

(c) The independent testing laboratory selecting a sample shall, using tamper-resistant products, record the batch, lot or production run number and the weight or quantity of the sample and seal the sample into a container.

2. An independent testing laboratory that receives a sample pursuant to this section shall test the sample as provided in NAC 453A.654.

3. From the time that a lot or production run has been homogenized for sample testing and eventual packaging and sale to a medical marijuana dispensary, facility for the production of edible marijuana products or marijuana-infused products or, if applicable, another cultivation facility until the independent testing laboratory provides the results from its tests and analysis, the facility which provided the sample shall segregate and withhold from use the entire lot or production run, except the samples that have been removed by the independent testing laboratory for testing. During this period of segregation, the facility which provided the sample shall maintain the lot or production run in a secure, cool and dry location so as to prevent the marijuana from becoming contaminated or losing its efficacy. Under no circumstances shall the facility which provided the sample sell the marijuana or edible marijuana products or marijuana-infused products, as applicable, to a medical marijuana dispensary, facility for the production of edible marijuana products or marijuana-infused products or, if applicable, another cultivation facility before the time that the independent testing laboratory has completed its testing and analysis and provided those results, in writing, to the facility which provided the sample.

4. ~~[An]~~ *Except as otherwise provided in subsection 5, an* independent testing laboratory shall immediately return or dispose of any sample received pursuant to this section upon the completion of any testing, use or research. If an independent testing laboratory disposes of a

sample received pursuant to this section, the laboratory shall document the disposal of the sample using its inventory control system pursuant to NRS 453A.356 and NAC 453A.414.

5. *An independent testing laboratory shall keep any sample which fails testing or which is collected by the State Department of Agriculture for confirmation testing for 30 days after failure or collection. A sample which is kept pursuant to this subsection must be stored in a manner approved by the Department of Taxation. A marijuana testing facility shall dispose of a sample kept pursuant to this subsection after 30 days have elapsed after failure or collection.*

6. Except as otherwise provided in NAC 453A.672, if a sample provided to an independent testing laboratory pursuant to this section does not pass the testing required by NAC 453A.654, the facility which provided the sample shall dispose of the entire lot or production run from which the sample was taken and document the disposal of the sample using its inventory control system pursuant to NRS 453A.356 and NAC 453A.414.

~~[6. For the purposes of the microbial test described in NAC 453A.654, a sample provided to an independent testing laboratory pursuant to this section shall be deemed to have passed if it satisfies the standards set forth in Table 9 of the Cannabis Inflorescence: Standards of Identity, Analysis, and Quality Control monograph adopted by reference pursuant to NAC 453A.652.]~~

7. ~~[For the purposes of the mycotoxin test described in NAC 453A.654, a sample provided to an independent testing laboratory pursuant to this section shall be deemed to have passed if it meets the following standards:~~

Test	Specification
The total of aflatoxin B₁,	

~~afatoxin B2, aflatoxin G1 and~~

~~aflatoxin G2..... <20 uG/KG of Substance~~

~~Ochratoxin A..... <20 uG/KG of Substance~~

~~8. For the purposes of the heavy metal test described in NAC 453A.654, a sample of marijuana shall be deemed to have passed if it meets the following standards established on the basis of 5 grams of dried marijuana as the daily dose:~~

~~Metal..... Natural Health Products~~

~~..... Acceptable limits in parts per million~~

~~Asbestos..... <2~~

~~Cadmium..... <0.82~~

~~Lead..... <1.2~~

~~Mercury..... <0.4~~

~~9.] If a sample provided to an independent testing laboratory pursuant to this section passes the testing required by NAC 453A.654, the independent testing laboratory shall release the entire lot or production run for immediate manufacturing, packaging and labeling for sale to a medical marijuana dispensary, a facility for the production of edible marijuana products or marijuana-infused products or, if applicable, another cultivation facility.~~

~~{H0-}~~ 8. A medical marijuana establishment shall not use more than one independent testing laboratory to test the same lot or production run of marijuana without the approval of the Department.

9. An independent testing laboratory shall file with the ~~{Division,}~~ Department, in a manner prescribed by the ~~{Division,}~~ Department, an electronic copy of ~~{all laboratory test results,}~~ the certificate of analysis for all tests performed by the independent testing laboratory, regardless of the outcome of the test, including all testing required by NAC 453A.654, at the same time that it transmits those results to the facility which provided the sample. ~~{In addition, the}~~ The independent testing laboratory shall ~~{maintain the laboratory test results and make them available to the Division upon request.}~~ transmit an electronic copy of the certificate of analysis for each test to the Department by electronic mail at:

(a) If the test was passed, mmelabpass@tax.state.nv.us; or

(b) If the test was failed, mmelabfail@tax.state.nv.us.

10. An electronic mail message transmitted pursuant to subsection 9 must be formatted as follows:

(a) The subject line of the electronic mail message must be the name of the medical marijuana establishment from which the sample was collected.

(b) The name of the electronic file containing the certificate of analysis must be:

(1) Except as otherwise provided in subparagraph (2) or (3), the four digit identifier assigned by the Department to the independent testing laboratory, followed by an underscore, followed by the four digit identifier assigned by the Department to the medical marijuana establishment from which the sample was collected, followed by an underscore, followed by:

(I) If the sample was from a production run, the production run number; or
(II) If the sample was not from a production run, the batch number, followed by an underscore, followed by the lot number.

(2) If the certificate of analysis is from a retesting of a previously failed sample, an underscore followed by the word “Retest” must be appended to the end of the name of the electronic file.

(3) If the certificate of analysis has been amended, an underscore followed by the word “Amended” must be appended to the end of the name of the electronic file.

(c) If the certificate of analysis has been amended, the electronic copy of the certificate of analysis must state “Amended” in bold red font at the center of the top of the first page of the report and must contain a statement of the reason for the amendment.

11. The ~~[Division]~~ **Department** will take immediate disciplinary action against any medical marijuana establishment which fails to comply with the provisions of this section or falsifies records related to this section, including, without limitation, revoking the medical marijuana establishment registration certificate of the medical marijuana establishment.

12. An independent testing laboratory may subcontract its testing of marijuana, edible marijuana products and marijuana-infused products only to another independent testing laboratory. *A transfer of samples pursuant to such a subcontract must be performed directly by the independent testing laboratories.*

Sec. 20. NAC 453A.660 is hereby amended to read as follows:

453A.660 1. The ~~[Division]~~ **Department** will establish a proficiency testing program for independent testing laboratories. *A proficiency testing program must include, without*

limitation, providing rigorously controlled and standardized proficiency testing samples to independent testing laboratories for analysis, reporting the results of such analysis and performing a statistical evaluation of the collective demographics and results of all independent testing laboratories.

2. Each independent testing laboratory must participate in the proficiency testing program established pursuant to this section.

3. If required by the ~~{Division}~~ *Department* as part of being issued or renewing a medical marijuana establishment registration certificate, the independent testing laboratory must have successfully participated in the proficiency testing program within the preceding 12 months.

4. To maintain continued registration as an independent testing laboratory, a laboratory must participate in the designated proficiency testing program with continued satisfactory performance as determined by the ~~{Division-}~~ *Department*.

5. An independent testing laboratory must analyze proficiency test samples using the same procedures with the same number of replicate analyses, standards, testing analysts and equipment as used for product testing.

6. The scientific director of the independent testing laboratory and all testing analysts that participated in a proficiency test must sign corresponding attestation statements.

7. The scientific director of the independent testing laboratory must review and evaluate all proficiency test results.

8. ~~{An independent testing laboratory must take and document remedial action when a score of less than 100 percent is achieved during a proficiency test. Documentation of remedial action~~

~~must include, without limitation, a review of samples tested and results reported since the last successful proficiency test.~~

~~—9.~~ Successful participation ~~(+s)~~ *includes* the positive identification of 80 percent of the target analytes that the independent testing laboratory reports to include quantitative results when applicable. Any false positive results reported will be considered an unsatisfactory score for the proficiency test.

~~{+0.}~~ 9. Unsuccessful participation in a proficiency test may result in limitation, suspension or revocation of the medical marijuana establishment registration certificate of the independent testing laboratory.

10. The Department will select a proficiency testing provider to conduct the proficiency testing program and determine the schedule that the proficiency testing provider will follow when sending proficiency testing samples to independent testing laboratories for analysis.

11. In addition to achieving the standard required pursuant to subsection 8, an independent testing laboratory successfully participates in the proficiency testing program only if the independent testing laboratory:

- (a) Obtains single-blind proficiency testing samples from the proficiency testing provider;*
- (b) Analyzes the proficiency testing sample for all analytes listed in NAC 453A.654 and sections 9, 10 and 11 of this regulation;*
- (c) Reports the results of its analysis to the proficiency testing provider;*
- (d) Analyzes a proficiency testing sample pursuant to the proficiency testing program not less frequently than once each 12 months;*
- (e) Pays the costs of subscribing to the proficiency testing program; and*

(f) Authorizes the proficiency testing provider to submit to the Department the results of any test performed pursuant to this section.

12. The performance of an independent testing laboratory is satisfactory pursuant to subsection 4 if the results of the testing performed pursuant to this section are within the limits of the acceptance range established by the proficiency testing provider. An independent testing laboratory that fails to meet this standard may request that the Department allow the independent testing laboratory to retest a proficiency testing sample once to establish satisfactory performance. If the Department denies the request or if the independent testing laboratory fails to meet the standard on retesting, the Department may limit, suspend or revoke the medical marijuana establishment registration certificate of the independent testing laboratory.

Sec. 21. NAC 453A.664 is hereby amended to read as follows:

453A.664 1. *Each independent testing laboratory must agree to become accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization within 1 year after licensure.*

2. Each independent testing laboratory that claims to be accredited must provide the ~~[Division]~~ Department with copies of each annual inspection report from the accrediting organization, including, without limitation, any deficiencies identified in and any corrections made in response to the report.

~~[2. An independent testing laboratory may not claim to be accredited unless it is accredited by an accrediting organization that is nationally recognized and approved by the Division.]~~

3. Inspection by an accrediting organization is not a substitute for inspection by the

~~[Division]~~ *Department.*

Sec. 22. Chapter 453D of NAC is hereby amended by adding thereto the provisions set forth as sections 23 to 246, inclusive, of this regulation.

Sec. 23. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 24 to 72, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 24. *“Analyte” means any compound, element, contaminant organism, species or other substance for which a marijuana sample is tested by a marijuana testing facility.*

Sec. 25. *“Batch” means the usable flower and trim contained within one or more specific lots of marijuana grown by a marijuana cultivation facility from one or more seeds or cuttings of the same strain of marijuana and harvested on or before a specified final date of harvest.*

Sec. 26. *“Batch number” means a unique numeric or alphanumeric identifier assigned to a batch by a marijuana establishment when the batch is planted.*

Sec. 27. *“CBD” means cannabidiol, which is a primary phytocannabinoid compound found in marijuana.*

Sec. 28. *“Combined marijuana establishment” means a group of marijuana establishments or medical marijuana establishments which:*

- 1. Each share identical ownership; and*
- 2. Are located on the same parcel of real estate.*

Sec. 29. *“Component marijuana establishment” means an individual marijuana establishment or medical marijuana establishment which is part of a combined marijuana establishment.*

Sec. 30. *“Designated primary caregiver” has the meaning ascribed to it in NRS 453A.080.*

Sec. 31. *“Division” means the Division of Public and Behavioral Health of the Department of Health and Human Services.*

Sec. 32. *“Edible marijuana products” has the meaning ascribed to it in NRS 453A.101.*

Sec. 33. *“Enclosed, locked facility” has the meaning ascribed to it in NRS 453A.103.*

Sec. 34. *“Excise tax on marijuana” means any excise tax imposed by chapter 372A or 453D of NRS.*

Sec. 35. *“Extraction” has the meaning ascribed to it in NRS 453.0825.*

Sec. 36. *“Fair market value” means the value established by the Department based on the price that a buyer would pay to a seller in an arm’s length transaction for marijuana in the wholesale market.*

Sec. 37. *“Foreign matter” means:*

1. Any plant matter, other than the marijuana product itself, which is more than 2 millimeters in size and constitutes more than 5 percent of the marijuana product; or

2. Any physical contaminant,

↪ which is included in the marijuana product.

Sec. 38. *“Growing unit” means an area within a marijuana cultivation facility in which growing operations are performed at all stages of growth. The term includes, without*

limitation, multiple rooms or areas that collectively are used to perform growing operations at all stages of growth regardless of whether each individual room or area has the capability to perform growing operations at all stages of growth.

Sec. 39. *“Imminent health hazard” means a situation that requires immediate correction or cessation of operations to prevent injury as determined by the Department pursuant to subsection 5 of section 120 of this regulation.*

Sec. 40. *“Inventory control system” means a process, device or other contrivance that may be used to monitor the chain of custody of marijuana from the point of cultivation to the end consumer.*

Sec. 41. *“Label” means written or printed material affixed to or included with marijuana or a marijuana product to provide identification or other information.*

Sec. 42. *“Letter of approval” has the meaning ascribed to it in NRS 453A.109.*

Sec. 43. *“Lot” means:*

- 1. The flowers from one or more marijuana plants of the same batch, in a quantity that weighs 5 pounds or less;*
- 2. The leaves or other plant matter from one or more marijuana plants of the same batch, other than full female flowers, in a quantity that weighs 15 pounds or less; or*
- 3. The wet leaves or other plant matter from one or more marijuana plants of the same batch used only for extraction, in a quantity that weighs 125 pounds or less within 2 hours of harvest.*

Sec. 44. *“Marijuana establishment agent” means an owner, officer, board member, employee or volunteer of a marijuana establishment, an independent contractor who provides*

labor relating to the cultivation, processing or distribution of marijuana or the production of marijuana or marijuana products for a marijuana establishment or an employee of such an independent contractor.

Sec. 45. *“Marijuana establishment agent registration card” means a registration card that is issued by the Department to authorize a person to volunteer or work at a marijuana establishment.*

Sec. 46. *“Medical marijuana establishment” has the meaning ascribed to it in NRS 453A.116.*

Sec. 47. *“Medical marijuana establishment agent registration card” has the meaning ascribed to it in NRS 453A.118, as amended by section 14 of Assembly Bill No. 422, chapter 540, Statutes of Nevada 2017, at page 3680 and section 26 of Senate Bill No. 487, chapter 541, Statutes of Nevada 2017, at page 3744.*

Sec. 48. *“Medical marijuana establishment registration certificate” has the meaning ascribed to it in NRS 453A.119, as amended by section 15 of Assembly Bill No. 422, chapter 540, Statutes of Nevada 2017, at page 3680 and section 27 of Senate Bill No. 487, chapter 541, Statutes of Nevada 2017, at page 3744.*

Sec. 49. *“Medical use of marijuana” has the meaning ascribed to it in NRS 453A.120.*

Sec. 50. *“Multiple-serving edible marijuana product” means an edible marijuana product which is offered for sale to a consumer and contains, within a variance of 15 percent, more than 10 milligrams and not more than 100 milligrams of THC. The term includes an edible marijuana product which contains multiple pieces, each of which contains 10*

milligrams or less of THC, if the edible marijuana product offered for sale contains a total of more than 10 milligrams of THC.

Sec. 51. *“Packaging” means the materials used to wrap or protect goods.*

Sec. 52. *“Pesticide” has the meaning ascribed to it in NRS 586.195.*

Sec. 53. *“Potential total THC” means the sum of the percentage by weight of tetrahydrocannabinolic acid multiplied by 0.877 plus the percentage by weight of THC.*

Sec. 54. 1. *“Potentially hazardous marijuana products and ingredients” means an edible item that is natural or synthetic and that requires temperature control because the item is in a form capable of supporting:*

- (a) The rapid and progressive growth of infectious or toxigenic microorganisms;*
- (b) The growth and toxin production of Clostridium botulinum; or*
- (c) In raw shell eggs, the growth of Salmonella enteritidis.*

2. *The term includes, without limitation:*

- (a) An animal item that is raw or heat-treated;*
- (b) An item of plant origin that is heat-treated or consists of raw seed sprouts;*
- (c) Cut melons and tomatoes;*
- (d) Garlic-in-oil mixtures that are not modified in a way that results in mixtures which prohibit growth; and*
- (e) Whipped butter.*

3. *The term does not include:*

- (a) An ingredient with a value of water activity of not more than 0.85;*
- (b) An ingredient with a pH level of not more than 4.6 when measured at 75°F (24°C); or*

(c) An ingredient, in a hermetically sealed and unopened container, that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution.

Sec. 55. “Premises” means:

1. Any temporary or permanent structure, including, without limitation, any building, house, room, apartment, tenement, shed, carport, garage, shop, warehouse, store, mill, barn, stable, outhouse or tent; or

2. Any conveyance, including, without limitation, any vessel, boat, vehicle, airplane, glider, house trailer, travel trailer, motor home or railroad car,

↪ whether located aboveground or underground and whether inhabited or not.

Sec. 56. “Production run” means:

1. For the extraction of concentrated marijuana by a marijuana establishment, the combination of one or more lots used to make the same product in one homogenous mixture produced using the same method which results in not more than 2.2 pounds of concentrated marijuana.

2. For the production of marijuana products by a marijuana product manufacturing facility, one homogenous mixture produced at the same time using the same method and which may include a combination of concentrated marijuana and other materials for the production of marijuana products.

Sec. 57. “Production run number” means a unique numeric or alphanumeric identifier assigned to a production run by a marijuana product manufacturing facility which accounts for each batch or lot or any concentrated marijuana used in the production run.

Sec. 58. *“Proficiency testing” means the evaluation, relative to a given set of criteria, of the performance, under controlled conditions, of a marijuana testing facility in analyzing unknown samples provided by an external source.*

Sec. 59. *“Proficiency testing program” means the program established by the Department pursuant to section 204 of this regulation to evaluate the proficiency of all marijuana testing facilities in this State.*

Sec. 60. *“Proficiency testing provider” means a person accredited to operate a proficiency testing program by an organization which is accredited pursuant to standard ISO/IEC 17011 of the International Organization for Standardization to perform such accreditation.*

Sec. 61. *“Proficiency testing sample” means a sample, the composition of which is unknown to the marijuana testing facility, provided to a marijuana testing facility to test whether the marijuana testing facility can produce analytical results within certain criteria.*

Sec. 62. *“Public transportation” means:*

- 1. Buses;*
- 2. Trains;*
- 3. Subways; and*
- 4. Other forms of transportation which charge a fare and are available to the public.*

Sec. 63. *“Registry identification card” has the meaning ascribed to it in NRS 453A.140.*

Sec. 64. *“Sampling protocols” means the procedures specified by the Department which are required to be used to obtain samples of marijuana for quality assurance testing.*

Sec. 65. *“Security equipment” means a system of video cameras, monitors, recorders, video printers, motion detectors, exterior lighting, electronic monitoring and other ancillary equipment used for surveillance of a marijuana establishment.*

Sec. 66. *“Seed-to-sale tracking system” means an electronic database which is used to monitor in real time the chain of custody of marijuana from the point of acquisition or planting to the end consumer and which is accessible by the Department and by marijuana establishments.*

Sec. 67. *“Separate operations” means any area in which a component marijuana establishment must maintain legal and operational separation from all other component marijuana establishments within a combined marijuana establishment.*

Sec. 68. *“Single-serving edible marijuana product” means an edible marijuana product which is offered for sale to a consumer and contains not more than 10 milligrams of THC.*

Sec. 69. *“Surveillance” means the capability to observe and record activities being conducted outside and inside a marijuana establishment.*

Sec. 70. *“Taxpayer” means a:*

- 1. Marijuana cultivation facility; or*
- 2. Retail marijuana store.*

Sec. 71. *“THC” has the meaning ascribed to it in NRS 453.139.*

Sec. 72. *“Usable marijuana” has the meaning ascribed to it in NRS 453A.160.*

Sec. 73. *As used in chapter 453D of NRS, the Department will interpret “marijuana” to exclude industrial hemp, as defined in NRS 557.040, which is grown or cultivated pursuant to chapter 557 of NRS.*

Sec. 74. 1. *When a marijuana establishment is required pursuant to this chapter or chapter 453D of NRS to provide information, sign documents or ensure actions are taken, a person identified in this subsection shall comply with the requirement on behalf of the marijuana establishment:*

(a) If a natural person is applying for a license for a marijuana establishment, the natural person;

(b) If a corporation is applying for a license for a marijuana establishment, a natural person who is an officer of the corporation;

(c) If a partnership is applying for a license for a marijuana establishment, a natural person who is a partner;

(d) If a limited-liability company is applying for a license for a marijuana establishment, a manager or, if the limited-liability company does not have a manager, a natural person who is a member of the limited-liability company;

(e) If an association or cooperative is applying for a license for a marijuana establishment, a natural person who is a member of the governing board of the association or cooperative;

(f) If a joint venture is applying for a license for a marijuana establishment, a natural person who signed the joint venture agreement; and

(g) If a business organization other than those described in paragraphs (b) to (f), inclusive, is applying for a license for a marijuana establishment, a natural person who is a member of the business organization.

2. For the purposes of this chapter and chapter 453D of NRS, the following persons must comply with the provisions governing owners, officers and board members of a marijuana establishment:

(a) If a corporation is applying for a license for a marijuana establishment, the officers of the corporation;

(b) If a partnership is applying for a license for a marijuana establishment, the partners;

(c) If a limited-liability company is applying for a license for a marijuana establishment, the members of the limited-liability company;

(d) If an association or cooperative is applying for a license for a marijuana establishment, the members of the association or cooperative;

(e) If a joint venture is applying for a license for a marijuana establishment, the natural persons who signed the joint venture agreement; and

(f) If a business organization other than those described in paragraphs (a) to (e), inclusive, is applying for a license for a marijuana establishment, the members of the business organization.

Sec. 75. 1. Except as otherwise required in subsection 2, the requirements of this chapter concerning owners of marijuana establishments only apply to a person with an aggregate ownership interest of 5 percent or more in a marijuana establishment.

2. If, in the judgment of the Department, the public interest will be served by requiring any owner with an ownership interest of less than 5 percent in a marijuana establishment to comply with any provisions of this chapter concerning owners of marijuana establishments, the Department will notify that owner and he or she must comply with those provisions.

Sec. 76. 1. *At least once each year, the Department will determine whether a sufficient number of marijuana establishments exist to serve the people of this State and, if the Department determines that additional marijuana establishments are necessary, the Department will issue a request for applications to operate a marijuana establishment. The Department will provide notice of a request for applications to operate a marijuana establishment by:*

(a) Posting on the Internet website of the Department that the Department is requesting applicants to submit applications;

(b) Posting a copy of the request for applications at the principal office of the Department, at the Legislative Building and at not less than three other separate, prominent places within this State; and

(c) Making notification of the posting locations using the electronic mailing list maintained by the Department for marijuana establishment information.

2. *When the Department issues a request for applications pursuant to this section, the Department will include in the request the point values that will be allocated to each applicable portion of the application.*

3. *The Department will accept applications in response to a request for applications issued pursuant to this section for 10 business days beginning on the date which is 45 business days after the date on which the Department issued the request for applications.*

4. *If the Department receives an application in response to a request for applications issued pursuant to this section on a date other than the dates set forth in subsection 3, the*

Department will not consider the application and must return the application to the entity that submitted the application.

Sec. 77. 1. *On or before November 15, 2018, a person who holds a medical marijuana establishment registration certificate may apply for not more than one license for a marijuana establishment of the same type by submitting:*

(a) A one-time, nonrefundable application fee of \$5,000 and, for an application for a license for a:

(1) Marijuana cultivation facility, an initial licensing fee of \$30,000.

(2) Marijuana distributor, an initial licensing fee of \$15,000.

(3) Marijuana product manufacturing facility, an initial licensing fee of \$10,000.

(4) Marijuana testing facility, an initial licensing fee of \$15,000.

(5) Retail marijuana store, an initial licensing fee of \$20,000.

(b) An application on a form prescribed by the Department which includes, without limitation:

(1) Whether the applicant is applying for a license for a marijuana establishment for a marijuana cultivation facility, a marijuana distributor, a marijuana product manufacturing facility, a marijuana testing facility or a retail marijuana store;

(2) The name of the proposed marijuana establishment, as reflected in both the medical marijuana establishment registration certificate held by the applicant and the articles of incorporation or other documents filed with the Secretary of State;

(3) The physical address where the proposed marijuana establishment will be located and the physical address of any co-owned or otherwise affiliated marijuana establishments;

- (4) The mailing address of the applicant;*
 - (5) The telephone number of the applicant;*
 - (6) The electronic mail address of the applicant;*
 - (7) A signed copy of the Request and Consent to Release Application Form for Marijuana Establishment License prescribed by the Department;*
 - (8) An attestation that the information provided to the Department to apply for the license for a marijuana establishment is true and correct according to the information known by the affiant at the time of signing;*
 - (9) The signature of a natural person for the proposed marijuana establishment as described in subsection 1 of section 74 of this regulation and the date on which the person signed the application; and*
 - (10) Any other information that the Department may require.*
- 2. Upon receipt of an application submitted pursuant to subsection 1, the Department will issue a license for a marijuana establishment to the applicant if the applicant:*
- (a) Holds a medical marijuana establishment registration certificate issued pursuant to chapter 453A of NRS of the same type as the license for a marijuana establishment for which the applicant has applied; and*
 - (b) Satisfies the requirements of subsection 5 of NRS 453D.210.*
- 3. If an application submitted pursuant to subsection 1 is not approved, the Department will refund the initial licensing fee included in the application to the applicant.*
- Sec. 78. 1. On or before November 15, 2018, a person who holds a medical marijuana establishment registration certificate may apply for one or more licenses, in addition to a**

license issued pursuant to section 77 of this regulation, for a marijuana establishment of the same type or for one or more licenses for a marijuana establishment of a different type, and on or after November 16, 2018, a person may apply for one or more licenses for a marijuana establishment by submitting an application in response to a request for applications issued pursuant to section 76 of this regulation which must include:

(a) A one-time, nonrefundable application fee of \$5,000.

(b) An application on a form prescribed by the Department. The application must include, without limitation:

(1) Whether the applicant is applying for a license for a marijuana establishment for a marijuana cultivation facility, a marijuana distributor, a marijuana product manufacturing facility, a marijuana testing facility or a retail marijuana store;

(2) The name of the proposed marijuana establishment, as reflected in both the medical marijuana establishment registration certificate held by the applicant, if applicable, and the articles of incorporation or other documents filed with the Secretary of State;

(3) The type of business organization of the applicant, such as individual, corporation, partnership, limited-liability company, association or cooperative, joint venture or any other business organization;

(4) Confirmation that the applicant has registered with the Secretary of State as the appropriate type of business, and the articles of incorporation, articles of organization or partnership or joint venture documents of the applicant;

(5) The physical address where the proposed marijuana establishment will be located and the physical address of any co-owned or otherwise affiliated marijuana establishments;

- (6) The mailing address of the applicant;*
 - (7) The telephone number of the applicant;*
 - (8) The electronic mail address of the applicant;*
 - (9) A signed copy of the Request and Consent to Release Application Form for Marijuana Establishment License prescribed by the Department;*
 - (10) If the applicant is applying for a license for a retail marijuana store, the proposed hours of operation during which the retail marijuana store plans to be available to sell marijuana to consumers;*
 - (11) An attestation that the information provided to the Department to apply for the license for a marijuana establishment is true and correct according to the information known by the affiant at the time of signing; and*
 - (12) The signature of a natural person for the proposed marijuana establishment as described in subsection 1 of section 74 of this regulation and the date on which the person signed the application.*
- (c) Evidence of the amount of taxes paid, or other beneficial financial contributions made, to this State or its political subdivisions within the last 5 years by the applicant or the persons who are proposed to be owners, officers or board members of the proposed marijuana establishment.*
- (d) A description of the proposed organizational structure of the proposed marijuana establishment, including, without limitation:*
- (1) An organizational chart showing all owners, officers and board members of the proposed marijuana establishment;*

(2) A list of all owners, officers and board members of the proposed marijuana establishment that contains the following information for each person:

(I) The title of the person;

(II) The race, ethnicity and gender of the person;

(III) A short description of the role in which the person will serve for the organization and his or her responsibilities;

(IV) Whether the person will be designated by the proposed marijuana establishment to provide written notice to the Department when a marijuana establishment agent is employed by, volunteers at or provides labor as a marijuana establishment agent at the proposed marijuana establishment;

(V) Whether the person has served or is currently serving as an owner, officer or board member for another medical marijuana establishment or marijuana establishment;

(VI) Whether the person has served as an owner, officer or board member for a medical marijuana establishment or marijuana establishment that has had its medical marijuana establishment registration certificate or license, as applicable, revoked;

(VII) Whether the person has previously had a medical marijuana establishment agent registration card or marijuana establishment agent registration card revoked;

(VIII) Whether the person is an attending provider of health care currently providing written documentation for the issuance of registry identification cards or letters of approval;

(IX) Whether the person is a law enforcement officer;

(X) Whether the person is currently an employee or contractor of the Department;

and

(XI) Whether the person has an ownership or financial investment interest in any other medical marijuana establishment or marijuana establishment.

(e) For each owner, officer and board member of the proposed marijuana establishment:

(1) An attestation signed and dated by the owner, officer or board member that he or she has not been convicted of an excluded felony offense, and that the information provided to support the application for a license for a marijuana establishment is true and correct;

(2) A narrative description, not to exceed 750 words, demonstrating:

(I) Past experience working with governmental agencies and highlighting past experience in giving back to the community through civic or philanthropic involvement;

(II) Any previous experience at operating other businesses or nonprofit organizations; and

(III) Any demonstrated knowledge, business experience or expertise with respect to marijuana; and

(3) A resume.

(f) Documentation concerning the size of the proposed marijuana establishment, including, without limitation, building and general floor plans with supporting details.

(g) The integrated plan of the proposed marijuana establishment for the care, quality and safekeeping of marijuana from seed to sale, including, without limitation, a plan for testing and verifying marijuana, a transportation or delivery plan and procedures to ensure adequate security measures, including, without limitation, building security and product security.

(h) A plan for the business which includes, without limitation, a description of the inventory control system of the proposed marijuana establishment to satisfy the requirements of NRS 453D.300 and section 108 of this regulation.

(i) A financial plan which includes, without limitation:

(1) Financial statements showing the resources of the applicant;

(2) If the applicant is relying on money from an owner, officer or board member, evidence that the person has unconditionally committed such money to the use of the applicant in the event the Department awards a license to the applicant and the applicant obtains the necessary approvals from the locality to operate the proposed marijuana establishment; and

(3) Proof that the applicant has adequate money to cover all expenses and costs of the first year of operation.

(j) Evidence that the applicant has a plan to staff, educate and manage the proposed marijuana establishment on a daily basis, which must include, without limitation:

(1) A detailed budget for the proposed marijuana establishment, including pre-opening, construction and first-year operating expenses;

(2) An operations manual that demonstrates compliance with this chapter;

(3) An education plan which must include, without limitation, providing educational materials to the staff of the proposed marijuana establishment; and

(4) A plan to minimize the environmental impact of the proposed marijuana establishment.

(k) If the application is submitted on or before November 15, 2018, for a license for a marijuana distributor, proof that the applicant holds a wholesale dealer license issued pursuant to chapter 369 of NRS, unless the Department determines that an insufficient number of marijuana distributors will result from this limitation.

(l) A response to and information which supports any other criteria the Department determines to be relevant, which will be specified and requested by the Department at the time the Department issues a request for applications which includes the point values that will be allocated to the applicable portions of the application pursuant to subsection 2 of section 76 of this regulation.

Sec. 79. *For the purposes of paragraph (c) of subsection 5 of NRS 453D.210, the distance must be measured from the front door of the proposed marijuana establishment to the closest point of the property line of a school or community facility.*

Sec. 80. 1. *If the Department receives more than one application for a license for a retail marijuana store in response to a request for applications made pursuant to section 76 of this regulation and the Department determines that more than one of the applications is complete and in compliance with this chapter and chapter 453D of NRS, the Department will rank the applications, within each applicable locality for any applicants which are in a jurisdiction that limits the number of retail marijuana stores, in order from first to last based on compliance with the provisions of this chapter and chapter 453D of NRS and on the content of the applications relating to:*

(a) Whether the owners, officers or board members have experience operating another kind of business that has given them experience which is applicable to the operation of a marijuana establishment;

(b) The diversity of the owners, officers or board members of the proposed marijuana establishment;

(c) The educational achievements of the owners, officers or board members of the proposed marijuana establishment;

(d) The financial plan and resources of the applicant, both liquid and illiquid;

(e) Whether the applicant has an adequate integrated plan for the care, quality and safekeeping of marijuana from seed to sale;

(f) The amount of taxes paid and other beneficial financial contributions, including, without limitation, civic or philanthropic involvement with this State or its political subdivisions, by the applicant or the owners, officers or board members of the proposed marijuana establishment;

(g) Whether the owners, officers or board members of the proposed marijuana establishment have direct experience with the operation of a medical marijuana establishment or marijuana establishment in this State and have demonstrated a record of operating such an establishment in compliance with the laws and regulations of this State for an adequate period of time to demonstrate success;

(h) The experience of key personnel that the applicant intends to employ in operating the type of marijuana establishment for which the applicant seeks a license; and

(i) Any other criteria that the Department determines to be relevant.

2. The Department will not require proof of zoning or land use approval to be submitted with an application for a license for a marijuana establishment and will not consider such approval when ranking applicants pursuant to subsection 1.

3. The Department will allocate the licenses for retail marijuana stores described in paragraph (d) of subsection 5 of NRS 453D.210 to jurisdictions within each county and to the unincorporated area of the county proportionally based on the population of each jurisdiction and of the unincorporated area of the county. Within each such jurisdiction or area, the Department will issue licenses for retail marijuana stores to the highest-ranked applicants until the Department has issued the number of licenses authorized for issuance. If two or more applicants have the same total number of points for the last application being awarded a license, the Department will select the applicant which has scored the highest number of points as related to the proposed organizational structure of the proposed marijuana establishment and the information concerning each owner, officer and board member of the proposed marijuana establishment, including, without limitation, the information provided pursuant to section 77 or 78 of this regulation. Notwithstanding the allocation of licenses pursuant to this subsection, upon the request of a county government, the Department may issue a license to a retail marijuana store located anywhere within that county if issuing such a license would not exceed the number of licenses authorized for issuance in the county pursuant to paragraph (d) of subsection 5 of NRS 453D.210.

4. After ranking applicants pursuant to subsection 1 and selecting applicants for the issuance of a license pursuant to subsection 3, the Department will notify each locality of the applicants selected to be issued a license within that locality.

5. To prevent monopolistic practices, the Department will ensure, in a county whose population is 100,000 or more, that the Department does not issue, to any person, group of persons or entity, the greater of:

(a) One license to operate a retail marijuana store; or

(b) More than 10 percent of the licenses for retail marijuana stores allocable in the county.

6. If the Department receives any findings from a report concerning the criminal history of an applicant or person who is proposed to be an owner, officer or board member of a proposed marijuana establishment that disqualify that person from being qualified to serve in that capacity, the Department will provide notice to the applicant and give the applicant an opportunity to revise its application. If a person who is disqualified from serving as an owner, officer or board member remains on the application as a proposed owner, officer or board member 90 days after the date on which the Department initially received the application, the Department may disqualify the application.

Sec. 81. If, within 10 business days after the date on which the Department begins accepting applications in response to a request for applications issued pursuant to section 76 of this regulation, the Department receives only one application from an applicant:

1. In a specific locality which limits the number of a type of marijuana establishment to one; or

2. Statewide, if the applicant is in a locality which does not limit the number of a type of marijuana establishment,

↪ and the Department determines that the application is complete and in compliance with this chapter and chapter 453D of NRS, the Department will issue a license for a marijuana